

# Exhibit B



**Planet Depos®**  
We Make It *Happen*™

---

# Transcript of Herman Dewitte

**Date:** December 14, 2022

**Case:** Fairfield Sentry Ltd., et al. -v- ABN AMRO Schweiz AG, et al.

**Planet Depos**

**Phone:** 888-433-3767

**Fax:** 888-503-3767

**Email:** [transcripts@planetdepos.com](mailto:transcripts@planetdepos.com)

**www.planetdepos.com**

Transcript of Herman Dewitte

1 (1 to 4)

December 14, 2022

1	1	3
1	1	A P P E A R A N C E S
2	2	FOR PLAINTIFF:
3	3	David S. Flugman
4	4	Tony Russo
5	5	Selendy Gay Elsberg
6	6	1290 Avenue of the Americas
7	7	New York, NY, 10104
8	8	FOR DEFENDANTS:
9	9	Jeff E. Butler
10	10	Clifford Chance
11	11	31 West 52nd Street
12	12	New York, NY, 10019
13	13	ALSO PRESENT:
14	14	Kenneth M. Krys(remote)
15	15	
16	16	
17	17	
18	18	
19	19	
20	20	
21	21	
22	22	
23	23	
24	24	
25	25	
2	2	4
1	1	EXAMINATION
2	2	By Mr. Flugman 7
3	3	
4	4	INDEX OF EXHIBITIS
5	5	1 Amended (30)(6) Notice 7
6	6	2 Herman Dewitte LinkedIn Profile 7
7	7	3 BIL000001-74 103
8	8	4 ANWAR-C-ESI-00147641 119
9	9	5 ANWAR-C-ESI-00602905-2911 123
10	10	6 ANWAR-C-CFSE-00798374-75 127
11	11	7 NYAG-E000149291-93 129
12	12	8 NYAG-E000073073-77 134
13	13	9 NYAG-E001203552-53 139
14	14	10 BIL00521-529(French) 148
15	15	11 BIL00521-529(English) 148
16	16	12 BIL00530-532 180
17	17	13 Bloomberg News(BN) 12/15/08 205
18	18	14 Bloomberg News(BN) 12/31/08 214
19	19	15 SECSEV3323285-86 215
20	20	16 NY Times 11/16/22 217
21	21	17 BIL00534-538(French) 231
22	22	18 BIL00534-538(English) 231
23	23	19 BIL00533 244
24	24	20 Witness Handwritten Notes 267
25	25	

PLANET DEPOS

888.433.3767 | WWW.PLANETDEPOS.COM

December 14, 2022

<p>5</p> <p>1</p> <p>2</p> <p>3 LUXEMBOURG - December 14, 2022</p> <p>4 9:30 a.m.</p> <p>5 --oOo--</p> <p>6 HERMAN DEWITTE, Deponent herein, having been</p> <p>7 first duly sworn on oath, was examined and testified</p> <p>8 as follows:</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>7</p> <p>1 on the record --</p> <p>2 MR. FLUGMAN: I can identify that I</p> <p>3 believe our client, Kenneth Kryes, one of the joint</p> <p>4 liquidators of the Fairfield funds, is joining by</p> <p>5 Zoom audio conference.</p> <p>6 THE VIDEOGRAPHER: Thank you. Our court</p> <p>7 reporter is Christine Myerly on behalf of Planet</p> <p>8 Depos. Could I ask the court reporter to please</p> <p>9 swear in the witness, and we will proceed.</p> <p>10 THE COURT REPORTER: Will counsel please</p> <p>11 stipulate that, in lieu of formally swearing in the</p> <p>12 witness, the reporter will instead ask the witness</p> <p>13 to acknowledge that their testimony will be true</p> <p>14 under the penalties of perjury, that counsel will</p> <p>15 not object to the admissibility of the transcript</p> <p>16 based on proceeding in this way, and that the</p> <p>17 witness has verified that he is, in fact, Herman</p> <p>18 Dewitte?</p> <p>19 MR. BUTLER: Yes, I agree.</p> <p>20 MR. FLUGMAN: I agree.</p> <p>21 (Witness was sworn.)</p> <p>22 (Exhibits 1 and 2 marked for identification.)</p> <p>23 EXAMINATION</p> <p>24 BY MR. FLUGMAN:</p> <p>25 Q Good morning, Mr. Dewitte. As I</p>
<p>6</p> <p>1 (On the record at 9:36 a.m.)</p> <p>2 THE VIDEOGRAPHER: Good morning. Here</p> <p>3 begins media one in the videotaped deposition of</p> <p>4 Herman Dewitte in the matter of Fairfield Sentry</p> <p>5 Limited, et al, versus ABN AMRO (Schweiz) AG, et</p> <p>6 al., in the United States Bankruptcy Court, Southern</p> <p>7 District of New York. Case number 10-13164.</p> <p>8 Today's date is December the 14th, 2022.</p> <p>9 The time is 9:36 a.m. The videographer today is</p> <p>10 Wendy Viner on behalf of Planet Depos. This</p> <p>11 deposition is taking place at 14-16 Avenue Pasteur,</p> <p>12 Luxembourg.</p> <p>13 Could I ask counsel to identify themselves</p> <p>14 and state whom they represent.</p> <p>15 MR. FLUGMAN: Good morning, David Flugman</p> <p>16 from Selendy Gay Elsberg PLLC, along with my</p> <p>17 colleague Tony Russo, representing the Fairfield</p> <p>18 funds plaintiffs.</p> <p>19 MR. BUTLER: Jeff Butler from Clifford</p> <p>20 Chance, representing Banque Internationale</p> <p>21 Luxembourg.</p> <p>22 THE VIDEOGRAPHER: Can I ask the Zoom</p> <p>23 participants to state their name for the record,</p> <p>24 please.</p> <p>25 MR. BUTLER: David, can you just identify</p>	<p>8</p> <p>1 stated a moment ago, my name is David Flugman, I'm a</p> <p>2 partner of the law firm Selendy Gay Elsberg in New</p> <p>3 York. Our firm, along with Brown Rudnick, represent</p> <p>4 the joint liquidators of the Fairfield funds, one of</p> <p>5 whom I believe is on the line with us today.</p> <p>6 The funds are plaintiffs in a lawsuit that</p> <p>7 was filed against Dexia Banque Internationale of</p> <p>8 Luxembourg, which I understand is now referred to as</p> <p>9 Banque Internationale of Luxembourg.</p> <p>10 Throughout the course of the day today, I</p> <p>11 am going to refer to the bank as BIL, I hope that is</p> <p>12 okay with you. To be clear, when I use the term BIL</p> <p>13 today, I mean to include BIL in any predecessor</p> <p>14 entity that may have gone by a different name. Do</p> <p>15 you understand that I mean to include -- so if the</p> <p>16 bank was known as Dexia BIL at a certain point in</p> <p>17 time, when I use the term BIL, I mean to include</p> <p>18 that as well?</p> <p>19 A Okay.</p> <p>20 Q Just to confirm, you currently are</p> <p>21 employed by BIL, correct?</p> <p>22 A Confirmed.</p> <p>23 Q Sir, have you ever provided</p> <p>24 deposition testimony before?</p> <p>25 A No, I never have.</p>

PLANET DEPOS

888.433.3767 | WWW.PLANETDEPOS.COM

December 14, 2022

<p>9</p> <p>1 Q And have you ever testified in 2 connection with a U.S. litigation? 3 A <b>No, I never have.</b> 4 Q Before we begin, I would like to 5 go over a couple of the ground rules for today's 6 deposition so we are all clear up front. 7 First, as you see to your immediate left, 8 we have a court reporter, who is working hard to 9 take down everything that we all say in the room 10 during the deposition. It is important that you 11 allow me to finish asking my question before you 12 respond, and I of course will extend to you the same 13 courtesy so that nobody is talking over one another 14 and the court reporter can get a clean record. Is 15 that okay? 16 A <b>Perfect.</b> 17 Q It is also important that you 18 provide verbal answers to my questions. Again, the 19 court reporter can't transcribe head nods or shakes. 20 So please try to answer my questions verbally. 21 A <b>I understand.</b> 22 Q We are speaking English today. 23 Are you fluent in the English language? 24 A <b>It is not my native language, but</b> 25 <b>I think I can express myself with a reasonable level</b></p>	<p>11</p> <p>1 some of my questions for the record. But unless he 2 instructs you not to answer my question, you still 3 must answer it if you understand it. Do you 4 understand? 5 A <b>I understand.</b> 6 Q Sir, are you currently taking any 7 medication that might impact your memory or your 8 ability to recall events or answer my questions 9 today? 10 A <b>No.</b> 11 Q Is there anything else that might, 12 in your opinion, impact your memory or ability to 13 testify here today? 14 A <b>No.</b> 15 Q Is there any reason that you can't 16 give your best, most accurate and complete testimony 17 sitting here today? 18 A <b>No.</b> 19 Q There is one additional definition 20 and term about which I want to be clear up front so 21 that I make sure we are in agreement at the start. 22 We are going to be talking a lot today 23 about electronically stored information, which I'll 24 refer to as ESI. When I use that term, ESI, I mean 25 it in the broadest sense to include electronic data</p>
<p>10</p> <p>1 <b>of understanding, yes.</b> 2 Q Are you comfortable -- you are 3 comfortable testifying today in English with me? 4 A <b>Yes.</b> 5 Q If at some point during the day 6 you don't understand a question that I ask, please 7 tell me, and I will try my best to rephrase it so 8 that you do understand it. That includes if I use a 9 word in English that you might not be familiar with. 10 Please tell me. 11 If you do answer my question without 12 telling me that you don't understand it, I am going 13 to assume that you have understood it, is that fair? 14 A <b>That is fair, yes.</b> 15 Q We are going to aim to take a 16 break every hour or so. We will break longer for 17 lunch. If you need to take a break at any other 18 time during the course of the deposition, just tell 19 me, and we will take a break. All I ask is that if 20 I have a question pending on the table, that you 21 answer that question, and then we will take a break. 22 Okay? 23 A <b>Okay. Understood.</b> 24 Q During the course of the 25 deposition, your counsel, Mr. Butler may object to</p>	<p>12</p> <p>1 that is created, copied or stored in electronic 2 form, even if it may exist in a hard copy someplace 3 else. 4 That would include things like e-mails, 5 their attachments, but also voice mails, recordings 6 of phone calls, word processing documents like Word 7 for Windows files or Word Perfect files, call logs, 8 electronic scans of hard copy documents and 9 electronic databases. Basically anything that 10 exists in electronic form. 11 So, when I use the term ESI, please keep 12 that in mind as you're answering my questions. If I 13 have a specific question about a type of ESI, like 14 an e-mail or a database, I will ask that 15 specifically. But when I use that term ESI, please 16 think of it in that broad sense. 17 MR. BUTLER: Let me just say for the 18 record that ESI is not a word that normal people use 19 in the ordinary course. Mr. Dewitte is not very 20 familiar with the way that terms is used in court 21 proceedings. So it may be helpful for clarity if 22 you specify the type of electronic document you are 23 speaking about in your questions. Just making a 24 comment; of course you can ask whatever questions 25 you want.</p>

December 14, 2022

<p>13</p> <p>1 BY MR. FLUGMAN:</p> <p>2 Q Thank you. What I was about to</p> <p>3 say as well is, if you ever have a question about</p> <p>4 what I mean when I use that term, if you are unsure</p> <p>5 or if there is a distinction in your mind between an</p> <p>6 e-mail and a database, for example, or an e-mail and</p> <p>7 a document that's scanned into an electronic form,</p> <p>8 please tell me, and I will do my best to clarify.</p> <p>9 As I said, I will try and ask specific</p> <p>10 questions as I go through the deposition if I mean a</p> <p>11 specific type of ESI. If I do use that term, I do</p> <p>12 mean it in that broad sense. If you have any</p> <p>13 questions about that, please let me know.</p> <p>14 A Okay.</p> <p>15 Q Okay.</p> <p>16 (Off the record discussion.)</p> <p>17 BY MR. FLUGMAN:</p> <p>18 Q Let's take a look at what has been</p> <p>19 marked as Exhibit 2, which is in your hands. I will</p> <p>20 represent to you that this is what we understand to</p> <p>21 be a profile of you from LinkedIn. The reason I've</p> <p>22 showed it to you is hopefully we can use this to</p> <p>23 walk through some of your background in a way that</p> <p>24 will streamline the deposition.</p> <p>25 The first question I have for you is,</p>	<p>15</p> <p>1 A Yes.</p> <p>2 Q Okay. And you currently hold the</p> <p>3 title head of legal wealth management, is that</p> <p>4 correct?</p> <p>5 A That is a correct, yes.</p> <p>6 Q And you have held that title from</p> <p>7 March of 2010 to the present?</p> <p>8 A That is correct, yes.</p> <p>9 Q Can you describe for me, please,</p> <p>10 what your responsibilities are in that role?</p> <p>11 A I am heading a four to five number</p> <p>12 of lawyers team. We are specialized in providing</p> <p>13 service, legal service, to wealth management</p> <p>14 clients. That includes but is not limited to</p> <p>15 granting loans to credit facilities, taking the</p> <p>16 appropriate guarantees.</p> <p>17 Secondly, investment services. Investment</p> <p>18 services, which has within Europe a very specific</p> <p>19 definition, according to MiFIDs, which are European</p> <p>20 directives implemented in each member state.</p> <p>21 And thirdly, we supervise services, or</p> <p>22 legal internal services, in relation to insurances,</p> <p>23 because our bank is not only licensed as a bank, it</p> <p>24 is also licensed as an insurance broker.</p> <p>25 Q So do I understand you correctly</p>
<p>14</p> <p>1 turning to page 3 of the exhibit, where it lists</p> <p>2 some of your employment history and education, can</p> <p>3 you glance at that and just let me know if anything</p> <p>4 there is inaccurate.</p> <p>5 (Pause.)</p> <p>6 A There is one specific point I want</p> <p>7 to highlight, is that in-house lawyer for Dexia from</p> <p>8 November 2007 until March 2010, technically speaking</p> <p>9 BIL was part of the Dexia group until 2012, and not</p> <p>10 2010, just for your information.</p> <p>11 Q Okay. While you were working in</p> <p>12 the role -- first of all, I think you said 2007, did</p> <p>13 you mean November 2002?</p> <p>14 A There is mentioned from November</p> <p>15 2002 until 2010.</p> <p>16 Q Okay.</p> <p>17 A But BIL was part of the Dexia</p> <p>18 group not until 2010, but until 2012.</p> <p>19 Q Okay.</p> <p>20 A A little bit above there is the</p> <p>21 BIL logo, which might lead to confusion when BIL has</p> <p>22 been sold to a third shareholder.</p> <p>23 Q I understand. Throughout the time</p> <p>24 period November 2002 to March 2010, was BIL part of</p> <p>25 the Dexia group?</p>	<p>16</p> <p>1 that you function in this role as a lawyer within</p> <p>2 the bank?</p> <p>3 A That is correct. Yes.</p> <p>4 Q Do you serve in any business role,</p> <p>5 or strictly a legal role?</p> <p>6 A Well, when you are an in-house</p> <p>7 counsel, of course our main goal or the main purpose</p> <p>8 of an in-house counsel is to make sure that</p> <p>9 everything that is done within the bank is aligned</p> <p>10 with the legal obligations of Luxembourg, or outside</p> <p>11 of Luxembourg. But we are also being paid to do</p> <p>12 business. So it has a kind of, well, double</p> <p>13 function. But our main goal of course is a legal</p> <p>14 function, yes.</p> <p>15 Q Okay. Let me be perhaps more</p> <p>16 specific. Do you in your job as head of legal</p> <p>17 wealth management provide investment services to</p> <p>18 clients, do you counsel clients on investments they</p> <p>19 might make?</p> <p>20 A No.</p> <p>21 Q Who would you consider to be your</p> <p>22 clients in your role?</p> <p>23 A As I said before, we have internal</p> <p>24 clients of the bank, then we also have the end</p> <p>25 clients of the bank. So, our main clients are, of</p>

December 14, 2022

<p>17</p> <p>1 course, the internal clients, but because our goal 2 or aim is to be efficient and to provide internal 3 services to our internal clients, they are happy 4 when their end clients are happy. So, basically we 5 have two kind of clients. I don't know if that is 6 understandable or not.</p> <p>7 Q I think I understand. Let me 8 clarify. As I understand it, you provide legal 9 advice to people working within the bank about their 10 jobs.</p> <p>11 A Correct.</p> <p>12 Q Do I understand you correctly that 13 you also provide legal advice to customers of the 14 bank?</p> <p>15 A Not directly to customers, no.</p> <p>16 But they are involved in -- for instance, if we 17 structure and if we implement a credit file for a 18 client, so typically a German client who's acquiring 19 real estate in Spain, for instance, we will work on 20 the credit facilities, on the collateral, but we 21 will also work closely together -- so internally not 22 only with relationship manager, so the employee of 23 the bank, but also closely with the client himself, 24 especially if he has no outside counsel.</p> <p>25 Q The investment professionals to</p>	<p>19</p> <p>1 that first of all we provide legal advice in 2 relation to investment services about the Luxembourg 3 regulations, first of all.</p> <p>4 Secondly, in that specific area of advice, 5 our advice is very limited, because most of the time 6 we work on templates, advisory templates, which are 7 only exceptionally tailor-made. So our team will 8 never be involved in the choice of a specific stock 9 or -- it will only be in relation to the -- either 10 the interpretation of the Luxembourg law regulations 11 or European law regulations, which have been 12 implemented in Luxembourg as a member state. Either 13 templates.</p> <p>14 Q Okay. I understand. With respect 15 to the last part of your answer, I take it as part 16 of your job you are familiar with applicable 17 regulations that would govern the bank, such as the 18 Luxembourg regulations you just mentioned and the 19 European directives, is that right?</p> <p>20 A In relation to investment advice?</p> <p>21 Q Well, in relation to -- in 22 relation to regulations that govern the bank's 23 operations broadly, do you have familiarity with 24 that?</p> <p>25 A Broadly speaking, yes. But law,</p>
<p>18</p> <p>1 whom you provide legal services who work within the 2 bank, do those include professionals who work with 3 clients in making investments in hedge funds?</p> <p>4 A We do have investment 5 professionals providing advice to -- depends on your 6 definition of hedge funds. I don't know if your 7 definition of hedge funds can be aligned with a 8 definition like not stock quoted assets?</p> <p>9 Q What about -- sorry.</p> <p>10 A Sorry, is that what you mean?</p> <p>11 Q I mean funds like the Fairfield 12 funds, so private funds that make investments in, 13 you know, funds of funds or other types of vehicles 14 like that. There are professionals in the bank who 15 work with private clients in making those 16 investments, right?</p> <p>17 A There are professionals within the 18 bank who are financial advisors, and they liaise 19 with clients in relation to their investment 20 appetite. These can include listed stock or 21 non-listed stock, yes.</p> <p>22 Q Would those be among the people to 23 whom you provide legal advice in your role as head 24 of legal wealth management?</p> <p>25 A That is correct, to the extent</p>	<p>20</p> <p>1 as you probably know, is so broad, that our 2 competences are limited to the ones I mentioned 3 previously. And even in relation to those 4 competences, when we have to work in a specific 5 file, it is maybe that we ask outside counsel for 6 help.</p> <p>7 Q Do you have familiarity generally 8 with Luxembourg or European regulations on 9 preservation of information within the bank broadly?</p> <p>10 A It is not part of our scope of 11 competences within the bank, so it is something -- 12 well, when internally I am being asked questions 13 about these kind of topics, I would typically refer 14 to internal other specialists.</p> <p>15 Q When you say it is not our 16 competence, are you referring to your group, 17 yourself and the four to five-lawyer team that you 18 described?</p> <p>19 A Exactly.</p> <p>20 Q Okay. So to whom would you go if 21 there was a question about preservation of documents 22 or electronic information within the bank?</p> <p>23 A Document preservation, I would 24 first go to compliance department, because in Europe 25 you have GDPR regulations, which are the global data</p>

December 14, 2022

<p style="text-align: right;">21</p> <p>1 protection regulations; then afterwards I would go 2 and check with the person in charge of the policies, 3 of internal policies of the bank, what exists within 4 the bank as policies.</p> <p>5 Q And who is in charge of creating, 6 maintaining policies relating to archiving and 7 preservation of information within the bank?</p> <p>8 A Per policy, there is a policy 9 owner within the bank, so the archiving of documents 10 policy, there is a specific owner, and his name is 11 Gilles Wagener.</p> <p>12 Q What is Mr. Wagener's title?</p> <p>13 A Mr. Wagener's title -- he is 14 responsible for the archiving and documents 15 management of the bank. This is one of his 16 competences, yes.</p> <p>17 Q Does he have a title within the 18 bank?</p> <p>19 A He has a title, but -- well, I 20 didn't check that in detail.</p> <p>21 Q Did you speak with Mr. Wagener in 22 connection with preparation for today's deposition?</p> <p>23 A Yes, we did. I spoke to 24 Mr. Wagener together with Jeff Butler, our outside 25 counsel. We spoke with him yesterday.</p>	<p style="text-align: right;">23</p> <p>1 very long time, but he was not that specific to give 2 a specific date from which moment on he was in 3 charge of that policy or the archiving management in 4 general.</p> <p>5 MR. BUTLER: Let me just caution you 6 again. I mean, that answer was fine, of course, but 7 you should try to avoid talking about the specific 8 conversation that we had with Mr. Wagener as opposed 9 to just providing the factual information that he 10 conveyed. I understand that is a hard line to draw, 11 but we are going to try to draw that line during 12 this deposition.</p> <p>13 BY MR. FLUGMAN:</p> <p>14 Q Was this the first time that -- 15 yesterday's conversation, was that the first time 16 that you spoke with Mr. Wagener about the archiving 17 policies and document retention that we are here to 18 talk about today?</p> <p>19 A Yes.</p> <p>20 Q Do you know if anyone else at the 21 bank or representing the bank spoke to Mr. Wagener 22 previously?</p> <p>23 A In relation to this deposition?</p> <p>24 Q In relation to the issues about 25 document preservation at BIL during the period we</p>
<p style="text-align: right;">22</p> <p>1 Q Can you tell me how long you and 2 Mr. Wagener and Mr. Butler spoke?</p> <p>3 A It was roughly 30 minutes.</p> <p>4 Q Were there specific facts that you 5 learned from speaking with Mr. Wagener that are 6 relevant to your testimony here today?</p> <p>7 MR. BUTLER: Let me just caution you, 8 Mr. Dewitte, to only discuss factual information 9 which you may have learned from Mr. Wagener as 10 opposed to the communications themselves that we had 11 with him yesterday. You can answer the question.</p> <p>12 A Basically, we exchanged about the 13 policy -- the internal policy applicable within the 14 bank of which he is the owner.</p> <p>15 Q And which policies are those?</p> <p>16 A These policies, they have been 17 provided to you, and they are entitled "Archive 18 Management of Documents."</p> <p>19 Q Okay. I am sure we will talk 20 about those in a bit. Has Mr. Wagener -- how long 21 has Mr. Wagener owned the archiving policies that 22 you just described?</p> <p>23 A As far as -- the initial policy 24 that was retrieved goes back to 2003. He confirmed 25 yesterday that he was in charge of that policy for a</p>	<p style="text-align: right;">24</p> <p>1 are here to talk about, 2000 to 2008 roughly?</p> <p>2 A To the best of my knowledge, no, 3 nobody else.</p> <p>4 Q Do you know whether Mr. Wagener 5 was the owner of these policies prior to 2008?</p> <p>6 A I do not have that information.</p> <p>7 That is my understanding, that -- because he is in 8 charge of that department for as long I worked 9 within the bank. And I know that the -- within the 10 bank and BIL in particular, the policies are being 11 drafted by -- not by legal, but by the operational 12 persons in charge of a specific domain of 13 competence.</p> <p>14 Q So let me understand that. The 15 policies are drafted by nonlawyers, do I understand 16 that correctly?</p> <p>17 A That is correct, yes.</p> <p>18 Q Are policies reviewed by lawyers 19 before they are implemented?</p> <p>20 A It depends. It depends of the 21 policy. When they have to be reviewed by legal, it 22 is mentioned on the policy. So the stakeholders, 23 there is an owner mentioned on the policy, and 24 stakeholders might be legal compliance or other 25 support functions which need to review these</p>



December 14, 2022

<p>25</p> <p>1 policies.</p> <p>2 Q Do you know whether the archiving</p> <p>3 policy that dates back to 2003 was reviewed by a</p> <p>4 lawyer within BIL or outside counsel before it was</p> <p>5 implemented?</p> <p>6 A Yes, that has been reviewed.</p> <p>7 Q Do you know by whom it was</p> <p>8 reviewed?</p> <p>9 A I do not have that information,</p> <p>10 no.</p> <p>11 Q To whom do you report in your role</p> <p>12 as head of legal wealth management?</p> <p>13 A My direct report, his name is</p> <p>14 Frederick Sudret, and he is the head of legal of</p> <p>15 BIL.</p> <p>16 Q Is there a general counsel of BIL</p> <p>17 or is that the function that the gentleman you just</p> <p>18 mentioned fills?</p> <p>19 A There is a general counsel, and</p> <p>20 direct report of Frederick Sudret, so he's plus one,</p> <p>21 as we say. His name is Bernard Mommens, he's a</p> <p>22 member of the executive committee, and he is general</p> <p>23 counsel and secretary general of the bank.</p> <p>24 Q Mr. Mommens still works at the</p> <p>25 bank?</p>	<p>27</p> <p>1 accountant-wise speaking, the accountant on the</p> <p>2 files would be similar.</p> <p>3 Q Do you recall ever having provided</p> <p>4 legal advice to any of the individuals working at</p> <p>5 BIL who were involved with the Fairfield funds or</p> <p>6 investments with Bernard Madoff?</p> <p>7 MR. BUTLER: Object to the form of that</p> <p>8 question. And you can answer that question yes or</p> <p>9 no. Let's proceed cautiously because we are talking</p> <p>10 about your legal advice.</p> <p>11 BY MR. FLUGMAN:</p> <p>12 Q I should clarify, I am not asking</p> <p>13 for what that advice may or may not have been, I am</p> <p>14 just asking a yes-or-no question, did you provide,</p> <p>15 in your memory, any legal advice to anyone within</p> <p>16 the bank working on Fairfield or Madoff investments.</p> <p>17 A You mean prior to 2008 or after</p> <p>18 2008 or --</p> <p>19 Q I mean it broadly. But if there</p> <p>20 is a distinction in your mind, please tell me.</p> <p>21 A Well, for me personally, and the</p> <p>22 bank, was not aware about the fraud of Madoff before</p> <p>23 December 2008. So, personally, I have been working</p> <p>24 on the file only from the end of December 2008 on.</p> <p>25 Q Okay. So just so I understand it,</p>
<p>26</p> <p>1 A Mr. Mommens still works at the</p> <p>2 bank, yes.</p> <p>3 Q You have held the position of head</p> <p>4 of legal wealth management for a span of about 12</p> <p>5 years and 10 months, according to this printout,</p> <p>6 since March of 2010. Has the nature of your job</p> <p>7 responsibilities been the same throughout that</p> <p>8 period or have they shifted over time?</p> <p>9 A They are more or less the same.</p> <p>10 Q Is there any way that you think</p> <p>11 they differ that is material in your mind?</p> <p>12 A It is more complex these days</p> <p>13 than -- way more complex than 23 years ago.</p> <p>14 Q Why is that?</p> <p>15 A Because there are much more</p> <p>16 regulations when I compare to when I started to</p> <p>17 work. So, yes, it is more complex.</p> <p>18 Q And before you were head of legal</p> <p>19 wealth management, your profile lists you as</p> <p>20 in-house lawyer between November of 2002 and March</p> <p>21 of 2010. Can you describe for me what your job</p> <p>22 responsibilities were during that time frame?</p> <p>23 A They were more or less in line</p> <p>24 what I am doing right now, except right now I have</p> <p>25 the responsibility to manage a team. But</p>	<p>28</p> <p>1 you don't recall providing advice while BIL was</p> <p>2 investing with Fairfield or Madoff to any of the</p> <p>3 professionals involved in those responsibilities?</p> <p>4 A That is correct.</p> <p>5 Q Am I correct in understanding that</p> <p>6 you have worked at BIL since graduating from law</p> <p>7 school in 2002?</p> <p>8 A That is correct; if you don't take</p> <p>9 into account Geneva or the year I spent in Paris</p> <p>10 working for OT/Technology Corporation, yes.</p> <p>11 Q I don't see that on this exhibit.</p> <p>12 Is there a reference to that that I'm not focused</p> <p>13 on?</p> <p>14 A Well there is a reference, if you</p> <p>15 say, well the University of Geneva, I did a masters</p> <p>16 of business law there, which was a two years degree,</p> <p>17 or two years time period. The first year were</p> <p>18 theoretical lessons, and the second year was an</p> <p>19 internship which was basically normally working</p> <p>20 within a company.</p> <p>21 Q I see that during the time you</p> <p>22 were an in-house lawyer with Dexia you spent some</p> <p>23 time in New York at Financial Security Assurance,</p> <p>24 from 2006 to 2007. Can you tell me about what your</p> <p>25 job responsibilities in that role entailed?</p>

December 14, 2022

<p>29</p> <p>1       <b>A     Job responsibilities was mainly</b></p> <p>2 <b>assisting in-house counsel in -- basically giving</b></p> <p>3 <b>them a hand in their day-to-day management of their</b></p> <p>4 <b>files.</b></p> <p>5       Q     Did you have any exposure to U.S.</p> <p>6 litigation when you were working in that role?</p> <p>7       <b>A     No.</b></p> <p>8       Q     I see that you obtained a Master</p> <p>9 of Law from University of Brussels before attending</p> <p>10 the University of Geneva, is that right?</p> <p>11       <b>A     That is correct, yes.</b></p> <p>12       Q     Sir, do you have any training in</p> <p>13 information technology?</p> <p>14       <b>A     Absolutely not.</b></p> <p>15       Q     Do you have any training or</p> <p>16 experience with document preservation or archiving?</p> <p>17       <b>A     I have no specific training on</b></p> <p>18 <b>that, no.</b></p> <p>19       Q     Have any of your responsibilities</p> <p>20 at BIL included managing electronic information, or</p> <p>21 ESI?</p> <p>22       <b>A     No.</b></p> <p>23       Q     Have any of your responsibilities</p> <p>24 at BIL included investigating the potential</p> <p>25 destruction or deletion of electronically stored</p>	<p>31</p> <p>1 any efforts to monitor compliance with that</p> <p>2 litigation hold within the bank?</p> <p>3       <b>A     Personally, I was not, no.</b></p> <p>4       Q     Have any of your responsibilities</p> <p>5 at BIL involved monitoring or evaluating compliance</p> <p>6 with Luxembourg regulatory requirements, or document</p> <p>7 preservation or retention?</p> <p>8       <b>A     No.</b></p> <p>9       Q     Have any of your responsibilities</p> <p>10 at BIL involved monitoring or evaluating compliance</p> <p>11 with the document preservation or retention</p> <p>12 requirements of other countries like the United</p> <p>13 States?</p> <p>14       <b>A     No.</b></p> <p>15       Q     Do you personally have any prior</p> <p>16 experience with U.S. litigation before this</p> <p>17 deposition?</p> <p>18       <b>A     No.</b></p> <p>19       MR. BUTLER: I just want to clarify. You</p> <p>20 added "before this deposition" at the end of your</p> <p>21 question. Maybe you should ask that question again</p> <p>22 so he hears the whole question before he responds.</p> <p>23 BY MR. FLUGMAN:</p> <p>24       Q     Sure. What I am asking is, before</p> <p>25 preparing for this deposition, had you had any</p>
<p>30</p> <p>1 information?</p> <p>2       <b>A     No.</b></p> <p>3       Q     Have any of your responsibilities</p> <p>4 at BIL involved monitoring or evaluating compliance</p> <p>5 with litigation holds for U.S. litigation?</p> <p>6       <b>A     I'm sorry, could you repeat that</b></p> <p>7 <b>question, please.</b></p> <p>8       Q     Of course. Have any of your</p> <p>9 responsibilities at BIL involved monitoring or</p> <p>10 evaluating compliance with litigation holds issued</p> <p>11 in connection with U.S. litigation?</p> <p>12       <b>A     May I ask you to repeat it a third</b></p> <p>13 <b>time? I'm sorry for that, but I just want to be</b></p> <p>14 <b>sure that I correctly understand the question.</b></p> <p>15       Q     Sure. Have any of your</p> <p>16 responsibilities at BIL involved monitoring or</p> <p>17 evaluating compliance with litigation holds issued</p> <p>18 in connection with U.S. litigation?</p> <p>19       <b>A     Well, in 2010, litigation holds</b></p> <p>20 <b>has been -- has been issued or sent out to the bank,</b></p> <p>21 <b>yes.</b></p> <p>22       Q     Were you involved in sending that</p> <p>23 litigation hold out internally at the bank?</p> <p>24       <b>A     Personally, I was not.</b></p> <p>25       Q     Were you personally involved with</p>	<p>32</p> <p>1 experience in your -- personal experience with U.S.</p> <p>2 litigation?</p> <p>3       <b>A     No.</b></p> <p>4       Q     You understand that you are here</p> <p>5 today testifying as a corporate representative on</p> <p>6 behalf of the bank, is that right?</p> <p>7       <b>A     Yes.</b></p> <p>8       Q     And you understand that that means</p> <p>9 that when you are answering my questions today, you</p> <p>10 are answering based not just on what you have</p> <p>11 personally seen or experienced, but based on the</p> <p>12 information that was reasonably available to you on</p> <p>13 the subject matters that are covered by the</p> <p>14 deposition, do you understand that?</p> <p>15       <b>A     Understood, yes.</b></p> <p>16       Q     Basically you are standing in</p> <p>17 BIL's shoes today as you give deposition testimony,</p> <p>18 do you understand?</p> <p>19       <b>A     Understood, yes.</b></p> <p>20       Q     Do you know why you were selected</p> <p>21 to testify as BIL's corporate representative?</p> <p>22       MR. BUTLER: Objection. I will instruct</p> <p>23 him not to answer that.</p> <p>24       MR. FLUGMAN: It is just a yes-or-no</p> <p>25 question. I'm not asking for the reason.</p>

December 14, 2022

<p>33</p> <p>1 MR. BUTLER: I will let him answer the</p> <p>2 yes-or-no question. Can you repeat the question.</p> <p>3 Then, Mr. Dewitte, you can answer yes or no.</p> <p>4 BY MR. FLUGMAN:</p> <p>5 Q Do you know why you were selected</p> <p>6 to testify as BIL's corporate representative today?</p> <p>7 A Yes.</p> <p>8 Q Okay. When were you first</p> <p>9 informed that you might need to testify as BIL's</p> <p>10 corporate representative?</p> <p>11 MR. BUTLER: Again, I will object on the</p> <p>12 basis of potential privilege. But you can give a</p> <p>13 date if you know it, or the approximate time, but</p> <p>14 don't go into any of the substance of the</p> <p>15 communications that you had about this deposition.</p> <p>16 A Approximately a couple weeks ago.</p> <p>17 BY MR. FLUGMAN:</p> <p>18 Q Okay. Can you tell me who told</p> <p>19 you that you -- who asked you to testify? Just the</p> <p>20 person, I'm not asking for any substance of the</p> <p>21 conversation.</p> <p>22 A Frederick Sudret, head of legal.</p> <p>23 Q Sir, you understand that today's</p> <p>24 deposition is about certain topics that are related</p> <p>25 to document preservation within the bank?</p>	<p>35</p> <p>1 A Well, I have reviewed internal</p> <p>2 files within the legal department, first of all.</p> <p>3 Secondly, discussed with Jeff Butler, our outside</p> <p>4 counsel, these different topics. And thirdly, I</p> <p>5 have made together with Jeff Butler interviews of</p> <p>6 certain BIL employees and also certain persons</p> <p>7 outside the scope of BIL.</p> <p>8 Q Which internal files did you</p> <p>9 review in order to testify here today?</p> <p>10 A Physical files, physical binders,</p> <p>11 and electronically available data on my file server,</p> <p>12 or my file server available within the legal</p> <p>13 department.</p> <p>14 Q And what documents were contained</p> <p>15 in those physical binders that you reviewed?</p> <p>16 A Can you please be a little more</p> <p>17 specific about what documents? Do you mean -- yes.</p> <p>18 Q What categories of documents did</p> <p>19 you review in these physical binders in order to</p> <p>20 prepare yourself to testify here today?</p> <p>21 A Okay. Categories like e-mail or</p> <p>22 physical documents or binders, is that what you</p> <p>23 mean?</p> <p>24 Q I am trying to understand what</p> <p>25 actual documents you looked at. For example, did</p>
<p>34</p> <p>1 A I understand, yes.</p> <p>2 Q Okay. Let's take a look at the</p> <p>3 document in front of you that's been marked as</p> <p>4 Exhibit 1, which is a copy of the notice of</p> <p>5 deposition.</p> <p>6 MR. BUTLER: I have a copy.</p> <p>7 BY MR. FLUGMAN:</p> <p>8 Q First my question is, have you</p> <p>9 seen this document before?</p> <p>10 A Yes, I have.</p> <p>11 Q If you can turn, please, sir, to</p> <p>12 page 6 of the document, numbered page 6, where it</p> <p>13 says, "List of topics of examination." Have you</p> <p>14 reviewed the seven topics that appear on this list</p> <p>15 on pages 6 and 7 of Exhibit 1?</p> <p>16 A Yes, I have reviewed these topics.</p> <p>17 Q And are you familiar with each of</p> <p>18 the topics listed in Exhibit 1 on the list of topics</p> <p>19 of examination?</p> <p>20 MR. BUTLER: Objection to form. You can</p> <p>21 answer.</p> <p>22 A Yes.</p> <p>23 BY MR. FLUGMAN:</p> <p>24 Q How did you familiarize yourself</p> <p>25 in order to testify about these topics today?</p>	<p>36</p> <p>1 you look at policies, did you look at communications</p> <p>2 from the relevant time period? What do you recall</p> <p>3 about what you reviewed from a documents perspective</p> <p>4 in terms of the internal files you mentioned a</p> <p>5 moment ago?</p> <p>6 A Okay. Thank you. So, they</p> <p>7 include internal policies, include e-mail exchanges,</p> <p>8 and also documents attached to those e-mail</p> <p>9 exchanges; as well as physical files available in</p> <p>10 our team or available at the inspection team.</p> <p>11 Q Were the e-mail exchanges that you</p> <p>12 reviewed in electronic form when you reviewed them?</p> <p>13 A Yes. Electronic form, and also</p> <p>14 printed out into the binders, yes.</p> <p>15 Q Do you recall what time period the</p> <p>16 e-mail exchanges you reviewed were from?</p> <p>17 A Could you please rephrase that?</p> <p>18 Q Sure. Did you review e-mail</p> <p>19 exchanges that predate 2009?</p> <p>20 A Yes.</p> <p>21 Q Were those e-mail exchanges in</p> <p>22 electronic form or in hard copy form?</p> <p>23 A Both.</p> <p>24 Q What e-mails do you recall</p> <p>25 reviewing that were in electronic form that predate</p>

December 14, 2022

<p style="text-align: right;">37</p> <p>1 2009?</p> <p>2 <b>A For instance, if you ask me for an</b></p> <p>3 <b>example, the moment when BIL discovered about the</b></p> <p>4 <b>Madoff fraud, which was in -- by means of press</b></p> <p>5 <b>reports, which we learned at the time in</b></p> <p>6 <b>December 12th. So for instance, these kind of</b></p> <p>7 <b>e-mails I have reviewed in order to prepare myself</b></p> <p>8 <b>to topic number 2.</b></p> <p>9 Q That is helpful. If I understand</p> <p>10 you correctly, BIL learned of the Madoff fraud</p> <p>11 December 12, 2008?</p> <p>12 <b>A That is correct.</b></p> <p>13 Q And do you recall whose e-mails</p> <p>14 you reviewed in order to familiarize yourself with</p> <p>15 that fact in connection with your preparation for</p> <p>16 the deposition today?</p> <p>17 <b>A Yes.</b></p> <p>18 Q Whose e-mails were they?</p> <p>19 <b>A Several persons. There was for</b></p> <p>20 <b>instance one e-mail sent from Bernard Mommens to --</b></p> <p>21 <b>addressed to several employees of the bank by</b></p> <p>22 <b>informing them that a task force has been --</b></p> <p>23 MR. BUTLER: Let me just pause there. It</p> <p>24 is fine to mention the names of people who sent</p> <p>25 e-mails that you reviewed if they were privileged,</p>	<p style="text-align: right;">39</p> <p>1 <b>respond, but yes --</b></p> <p>2 MR. BUTLER: Let me just object to that.</p> <p>3 So, that is not exactly what he said. It is getting</p> <p>4 into the content of that e-mail, which was between</p> <p>5 lawyers within the bank at the time. So we just</p> <p>6 need to go very cautiously.</p> <p>7 BY MR. FLUGMAN:</p> <p>8 Q I am not trying to mischaracterize</p> <p>9 your words. I thought you said task force. Can you</p> <p>10 tell me what the purpose of the task force you</p> <p>11 mentioned was?</p> <p>12 <b>A The bank was not aware about the</b></p> <p>13 <b>fraud of Madoff and discovered it at December 12th</b></p> <p>14 <b>at that time. And I also have reviewed a press</b></p> <p>15 <b>release of the Securities and Exchange Commission,</b></p> <p>16 <b>which was also circulated within the bank. This</b></p> <p>17 <b>specific press release reports that Bernard Madoff</b></p> <p>18 <b>had 17 billion of assets under management at the</b></p> <p>19 <b>beginning of 2008, and most probably which was one</b></p> <p>20 <b>of the most important frauds in the economic history</b></p> <p>21 <b>of the planet earth, so it was huge.</b></p> <p>22 <b>So the aim or the goal or the intention of</b></p> <p>23 <b>this task force was to check to what extent the bank</b></p> <p>24 <b>would potentially be exposed to this fraud.</b></p> <p>25 Q Were you involved with that task</p>
<p style="text-align: right;">38</p> <p>1 but you shouldn't go into the content of the</p> <p>2 e-mails, except very general descriptions of the</p> <p>3 content.</p> <p>4 <b>A Okay. So if I rephrase, a</b></p> <p>5 <b>specific e-mail I have in mind was being sent by</b></p> <p>6 <b>Bernard Mommens to several senior executives of the</b></p> <p>7 <b>bank in relation to an action plan to be</b></p> <p>8 <b>implemented.</b></p> <p>9 Q And you reviewed this e-mail in</p> <p>10 electronic form in preparation for your deposition</p> <p>11 today?</p> <p>12 <b>A That is correct, yes.</b></p> <p>13 Q Do you recall who in the bank</p> <p>14 received Mr. Mommens' e-mail?</p> <p>15 <b>A Yes. There was for instance the</b></p> <p>16 <b>head of legal at that time, Jean-Marc van Oldeneel,</b></p> <p>17 <b>he was one of the addressees of that e-mail.</b></p> <p>18 Q Do you recall any other</p> <p>19 addressees, sitting here today?</p> <p>20 <b>A Also the -- no. That is the</b></p> <p>21 <b>main -- that was the main addressee.</b></p> <p>22 Q Okay. You mentioned that the</p> <p>23 e-mail discussed setting up a task force to respond</p> <p>24 to the Madoff fraud, is that correct?</p> <p>25 <b>A It depends on the definition to</b></p>	<p style="text-align: right;">40</p> <p>1 force at the time?</p> <p>2 <b>A Yes.</b></p> <p>3 Q Do you recall -- when you say to</p> <p>4 what extent the bank would be potentially exposed,</p> <p>5 can you tell me what you mean by that?</p> <p>6 <b>A Yes. Sure. Well, important to</b></p> <p>7 <b>know is that the bank granted some loans to several</b></p> <p>8 <b>feeder funds ultimately invested in Madoff; four, to</b></p> <p>9 <b>be exact, with a total exposure at the time of</b></p> <p>10 <b>discovery of the Madoff fraud of \$220 million US.</b></p> <p>11 <b>In parallel, out of these four feeder</b></p> <p>12 <b>funds, two of them the bank actively commercialized</b></p> <p>13 <b>parts of the shares of these feeder funds. In other</b></p> <p>14 <b>words, for a small to medium bank like BIL, this</b></p> <p>15 <b>exposure was huge.</b></p> <p>16 <b>And so it was important that the entire</b></p> <p>17 <b>bank was aligned with what needed to be undertaken</b></p> <p>18 <b>on credit side, on client side, on the insurance</b></p> <p>19 <b>side, on the communication with the regulator. It</b></p> <p>20 <b>was an important file for the bank at the time, yes.</b></p> <p>21 Q Can you recall which feeder funds</p> <p>22 the bank made loans to, that you just referenced in</p> <p>23 your answer?</p> <p>24 <b>A Yes, I can.</b></p> <p>25 Q Which ones were they?</p>

December 14, 2022

<p style="text-align: right;">41</p> <p>1       <b>A   Rafale Partners, Inc., Blue Star</b> 2 <b>Funds, Mianda and Mount Capital Funds.</b> 3       Q    Sir, do you know whether any of 4 those funds are based in the United States? 5       <b>A   I know that it is not the case.</b> 6 <b>These feeder funds are incorporated either in BVI or</b> 7 <b>the Cayman Islands.</b> 8       Q    All four of those funds? 9       <b>A   Yes.</b> 10      Q    Do you know whether any of the 11 four funds you mentioned have investment managers 12 who are based in the United States? 13      MR. BUTLER: Let me just object to the 14 question as outside the scope of the deposition 15 topics. You can answer if you know. Mr. Dewitte is 16 not prepared to give -- for this deposition to give 17 details about these matters. If he knows, he can 18 answer the question. 19      <b>A   I don't recall. It should be</b> 20 <b>mentioned I guess in the prospectus of these funds,</b> 21 <b>but I didn't prepare that information for this</b> 22 <b>deposition.</b> 23 <b>BY MR. FLUGMAN:</b> 24      Q    Do you know whether, as part of 25 the task force that you are describing, the bank</p>	<p style="text-align: right;">43</p> <p>1 after the fraud was discovered? 2       <b>A   No. Because at the time, the</b> 3 <b>Fairfield funds were not on the topic list of the</b> 4 <b>bank. Why -- I'm sorry.</b> 5       Q    Why -- 6       MR. BUTLER: I don't think you should go 7 into why as a matter of privilege. Why don't you 8 stop there. 9 BY MR. FLUGMAN: 10      Q    You are aware, though, sir, that 11 BIL had made investments in the Fairfield funds 12 prior to 2008? 13      <b>A   That is correct, yes.</b> 14      Q    And you are aware that the 15 Fairfield funds were incorporated in the British 16 Virgin Islands? 17      <b>A   Yes.</b> 18      Q    You are aware that the Fairfield 19 funds investment manager, Fairfield Greenwich Group, 20 was based in the United States? 21      <b>A   Yes.</b> 22      Q    Do you understand also that Mount 23 Capital is a Madoff feeder fund? 24      <b>A   Yes.</b> 25      Q    As is Blue Star fund?</p>
<p style="text-align: right;">42</p> <p>1 considered whether it might have claims against any 2 of the managers of the four funds that you just 3 mentioned? 4       MR. BUTLER: I just object. I don't see 5 how the witness could answer that question without 6 going into legal advice that was considered at the 7 time. So I will instruct him not to answer. 8       I guess as a yes-or-no question, if you 9 know the answer, I would allow it. Maybe we can 10 reread the question. 11 BY MR. FLUGMAN: 12      Q    That's what I'm asking at the 13 moment. Do you know whether the task force 14 considered if BIL had claims against the four funds 15 that you just mentioned or their service 16 professionals, like investment managers? 17      <b>A   I don't recall.</b> 18      Q    Okay. You understand also that 19 BIL had exposure to the Madoff Ponzi scheme through 20 investments in Fairfield, correct? 21      <b>A   I understand today, is that what</b> 22 <b>your question is?</b> 23      Q    First, you understand today? 24      <b>A   I understand today, yes.</b> 25      Q    Did you understand that in 2008</p>	<p style="text-align: right;">44</p> <p>1       <b>A   Yes.</b> 2       Q    And do you understand that Blue 3 Star invested into Fairfield as well? 4       <b>A   Partially, yes.</b> 5       Q    Okay. You mentioned reviewing 6 e-mails in electronic form. Can you recall, in 7 preparation for your deposition today, whether you 8 reviewed any other e-mails in electronic form that 9 predate the discovery of the Madoff fraud in 10 December of 2008? 11      <b>A   No.</b> 12      Q    No, you can't recall, or no, you 13 didn't review any? 14      <b>A   Can you repeat the question?</b> 15      Q    Sure. Did you review any e-mails 16 in electronic form in preparation for today's 17 deposition that predate December of 2008 when the 18 Madoff fraud was discovered by BIL? 19      <b>A   No.</b> 20      Q    You also mentioned that in 21 preparation for your testimony here today you 22 interviewed certain individuals. Can you please 23 tell me the names of the people with whom you spoke 24 in preparation for the deposition today? 25      <b>A   Sure. The first one you already</b></p>

December 14, 2022

<p style="text-align: right;">45</p> <p>1 have his name, it's Gilles Wagener, we referred to</p> <p>2 him previously.</p> <p>3 Second person I have spoken to is Aurore</p> <p>4 Moutte.</p> <p>5 Q Can you repeat that?</p> <p>6 A Aurore, you spell that</p> <p>7 A-U-R-O-R-E, and Moutte, M-O-U-T-T-E; as well as</p> <p>8 Michelle Albert; as well as William Goehry,</p> <p>9 G-O-E-H-R-Y; as well as Nicholas Vaisse,</p> <p>10 V-A-I-S-S-E; as well as Maria Totaro; as well as</p> <p>11 Marie-Anne Salentiny, S-A-L-E-N-T-I-N-Y.</p> <p>12 You asked for the BIL employees we</p> <p>13 interviewed but also for other persons?</p> <p>14 Q I asked for all persons. But let</p> <p>15 me ask before we get to that. Are the seven</p> <p>16 individuals you mentioned in the list you just gave</p> <p>17 us, are those all people who are currently employed</p> <p>18 by BIL?</p> <p>19 A That is correct, yes.</p> <p>20 Q Before we get to the others, we</p> <p>21 talked about Mr. Wagener and his role. Can you</p> <p>22 describe Aurore Moutte -- first of all, is that a</p> <p>23 woman or a man?</p> <p>24 A It is a woman, yes.</p> <p>25 Q Can you please tell me</p>	<p style="text-align: right;">47</p> <p>1 I am okay with that question. Limit your answer to</p> <p>2 the factual information that you may have learned</p> <p>3 from Ms. Moutte as opposed to the content of the</p> <p>4 discussion we had with her.</p> <p>5 BY MR. FLUGMAN:</p> <p>6 Q With that clarification, do you</p> <p>7 understand my question?</p> <p>8 A Could you please repeat it?</p> <p>9 Q Sure. Can you tell me the factual</p> <p>10 information that you discussed with Ms. Moutte in</p> <p>11 preparation for your testimony today?</p> <p>12 A We discussed policies in relation</p> <p>13 to documents, management and archiving.</p> <p>14 Q Did the policies that you</p> <p>15 discussed with Ms. Moutte relate to the time period</p> <p>16 prior to 2009?</p> <p>17 A Yes.</p> <p>18 Q And which policies did you discuss</p> <p>19 with Ms. Moutte that applied prior to 2009?</p> <p>20 A Archive management, document</p> <p>21 archive management.</p> <p>22 Q Any others that you recall?</p> <p>23 A That was the main policy.</p> <p>24 Q Is that the policy that you</p> <p>25 mentioned earlier that dates from 2003?</p>
<p style="text-align: right;">46</p> <p>1 Ms. Moutte's role at the bank is?</p> <p>2 A She is heading the team in charge</p> <p>3 of the policies of the bank, so the rules and</p> <p>4 policies of the bank.</p> <p>5 Q Do you know how long she has held</p> <p>6 that position?</p> <p>7 A I don't have that exact</p> <p>8 information available; for a couple of years.</p> <p>9 Q Do you know whether she held that</p> <p>10 position prior to 2009?</p> <p>11 A I don't have that information.</p> <p>12 Q Okay. Can you discuss the factual</p> <p>13 information that you discussed with Ms. Moutte?</p> <p>14 MR. BUTLER: Object to the question and</p> <p>15 instruct the witness not to answer on the ground of</p> <p>16 privilege.</p> <p>17 MR. FLUGMAN: I have asked for the facts</p> <p>18 that he learned from Ms. Moutte. How is that</p> <p>19 privileged?</p> <p>20 MR. BUTLER: Can I hear that question</p> <p>21 again?</p> <p>22 (Court reporter read back.)</p> <p>23 MR. BUTLER: With the clarification that</p> <p>24 the question is do you remember what factual -- can</p> <p>25 you relay what factual information she communicated,</p>	<p style="text-align: right;">48</p> <p>1 A That is correct, yes.</p> <p>2 Q Michelle Albert I believe is the</p> <p>3 next name you mentioned. What is Mr. Albert's role</p> <p>4 at the bank?</p> <p>5 A He is an inspection officer. He</p> <p>6 is a member of the inspection team.</p> <p>7 Q Could you describe what that is?</p> <p>8 A Inspection team is in charge of</p> <p>9 very specific files; for instance, they would be</p> <p>10 involved if there is internal fraud or potentially</p> <p>11 an external fraud, compared to the internal audits.</p> <p>12 Internal audit has a more follow-up</p> <p>13 function in the business, whereas inspection team</p> <p>14 would really be looking at unusual occurrences of</p> <p>15 the business of the bank. They are also in charge</p> <p>16 of liaising with the -- in French it's called the</p> <p>17 (French), which I presume in the United States would</p> <p>18 be the district attorney. But I am not sure about</p> <p>19 that.</p> <p>20 Q Prosecutorial -- government actor?</p> <p>21 A Yes.</p> <p>22 Q Do you know whether Mr. Albert was</p> <p>23 involved as an inspection officer during the time</p> <p>24 that the Madoff fraud was discovered in 2008?</p> <p>25 A Yes.</p>

December 14, 2022

<p style="text-align: right;">49</p> <p>1 Q Was Mr. Albert -- strike that.</p> <p>2 Can you tell me the factual information</p> <p>3 that you learned by speaking with Mr. Albert in</p> <p>4 preparation for today's deposition?</p> <p>5 A Yes. Mr. Albert, he confirmed to</p> <p>6 us that he has seized physical documents, he has</p> <p>7 identified physical documents and has stored them in</p> <p>8 a safe place in the archives of the inspection</p> <p>9 department.</p> <p>10 Q Do you know which physical</p> <p>11 documents Mr. Albert is referring to?</p> <p>12 A Yes. These are the physical</p> <p>13 binders in relation to Rafale, Blue Star, basically</p> <p>14 the feeder funds I have just mentioned to you to</p> <p>15 which the bank had its main exposure at the time we</p> <p>16 discovered the Madoff fraud.</p> <p>17 Q Do you know whether the physical</p> <p>18 documents that Mr. Albert seized or took possession</p> <p>19 of included documents relating to the Fairfield</p> <p>20 funds?</p> <p>21 A I know that that is not the case.</p> <p>22 Q He did not take documents related</p> <p>23 to the Fairfield funds?</p> <p>24 A Correct.</p> <p>25 Q Do you know when Mr. Albert took</p>	<p style="text-align: right;">51</p> <p>1 are you referring to the first question mentioned --</p> <p>2 Q I am just asking --</p> <p>3 A -- in the examination or --</p> <p>4 Q I am just picking up on the answer</p> <p>5 you just gave, which is that the legal department</p> <p>6 took copies of the subscription and redemption</p> <p>7 orders relating to the Fairfield funds when it</p> <p>8 received the summons and notification.</p> <p>9 A Shortly after that.</p> <p>10 Q So I am asking do you recall when</p> <p>11 that was.</p> <p>12 MR. BUTLER: The problem is that he</p> <p>13 described two different events. He is asking you</p> <p>14 which event are you asking about. Two things</p> <p>15 happened.</p> <p>16 BY MR. FLUGMAN:</p> <p>17 Q Let me break it down. When did,</p> <p>18 in your recollection, BIL receive the summons and</p> <p>19 notice relating to the lawsuit involving the</p> <p>20 Fairfield funds in the United States?</p> <p>21 A It was August 30, 2010.</p> <p>22 Q Do I understand your testimony to</p> <p>23 be that after that point in time, somebody from the</p> <p>24 legal department collected physical copies of the</p> <p>25 subscription and redemption orders relating to the</p>
<p style="text-align: right;">50</p> <p>1 the physical documents relating to the other funds</p> <p>2 that you mentioned?</p> <p>3 A Shortly after the discovery of the</p> <p>4 Madoff fraud, so that would have been in early 2009.</p> <p>5 Q Okay. And you mentioned physical</p> <p>6 documents. Do you know whether Mr. Albert took</p> <p>7 possession of any electronic documents at that time?</p> <p>8 A I know he didn't.</p> <p>9 Q He did not?</p> <p>10 A He did not. Sorry.</p> <p>11 Q Do you know whether anybody took</p> <p>12 possession of physical documents relating to the</p> <p>13 Fairfield funds after the discovery of the Madoff</p> <p>14 fraud?</p> <p>15 A At a certain point in time, the</p> <p>16 legal department took copies of the subscription and</p> <p>17 redemption orders in relation to the Fairfield</p> <p>18 funds.</p> <p>19 Q Do you recall when that was?</p> <p>20 A It was shortly after we have</p> <p>21 received the summons with notice, so the -- that we</p> <p>22 were -- we received the notification by the</p> <p>23 liquidator of Fairfield.</p> <p>24 Q Do you recall when that was?</p> <p>25 A The exact date that we received --</p>	<p style="text-align: right;">52</p> <p>1 Fairfield funds?</p> <p>2 A Made copies, yes, that is correct.</p> <p>3 Q Was that the first time that</p> <p>4 somebody in the bank had collected information</p> <p>5 relating to the Fairfield funds?</p> <p>6 A That is correct. To the best of</p> <p>7 my knowledge, yes.</p> <p>8 Q To be clear, it didn't -- the bank</p> <p>9 did not collect any information relating to the</p> <p>10 Fairfield funds in early 2009 when it collected</p> <p>11 information about the other four funds that you</p> <p>12 mentioned earlier?</p> <p>13 A Correct.</p> <p>14 Q Going back to your list of people,</p> <p>15 William Goehry, can you tell me please what</p> <p>16 Mr. Goehry's role at the bank is?</p> <p>17 A He is heading inspection</p> <p>18 department, so he is the team head. He is the boss,</p> <p>19 basically, of Michelle Albert.</p> <p>20 Q And did you -- strike that.</p> <p>21 What factual information did you learn</p> <p>22 relating to your deposition testimony today from</p> <p>23 Mr. Goehry?</p> <p>24 A Well --</p> <p>25 MR. BUTLER: Again I will caution the</p>

December 14, 2022

<p>53</p> <p>1 witness. It is a little bit difficult because he 2 asked about the discussion with him as opposed to 3 the factual information. I understand that is one 4 way to do it. But you should not talk about what 5 was discussed during your meeting with Mr. Goehry, 6 but only testify about facts that you may have 7 learned from that meeting, if you can separate the 8 facts from the discussion.</p> <p>9 <b>A Okay. Thank you. Well, I didn't</b> 10 <b>learn any facts from that meeting because he was not</b> 11 <b>working at inspection department at the time when</b> 12 <b>they were involved in the collection of these</b> 13 <b>physical documents.</b></p> <p>14 <b>BY MR. FLUGMAN:</b></p> <p>15 Q Okay. Mr. Vaisse, the next 16 person, what is his role?</p> <p>17 <b>A He is the head of data protection,</b> 18 <b>rule team. He is heading a small team, two or three</b> 19 <b>persons, making sure that the bank is aligned with</b> 20 <b>the GDPR, global data protection rules.</b></p> <p>21 Q Do his responsibilities extend 22 beyond GDPR, in your understanding?</p> <p>23 <b>A To the best of my knowledge, no.</b></p> <p>24 Q Same question, if you can tell me 25 any facts relevant to your testimony here today that</p>	<p>55</p> <p>1 MR. BUTLER: With that clarification. 2 BY MR. FLUGMAN:</p> <p>3 Q Did you discuss with Mr. Vaisse 4 whether electronically storing information, 5 including e-mails, was available from the pre-2009 6 time frame for certain BIL employees?</p> <p>7 <b>A Yes.</b></p> <p>8 MR. BUTLER: You can answer that yes or 9 no. Very well.</p> <p>10 BY MR. FLUGMAN:</p> <p>11 Q Do you recall which BIL employees 12 you discussed with Mr. Vaisse?</p> <p>13 <b>A Mainly Maria Totaro, previously</b> 14 <b>mentioned, and Marie-Anne Salentiny.</b></p> <p>15 Q Does BIL have electronically 16 stored information, including e-mails, for either 17 Ms. Salentiny or Ms. Totaro, from the pre-2009 time 18 frame?</p> <p>19 <b>A No.</b></p> <p>20 Q Do you recall discussing any other 21 current or former BIL employees' electronically 22 stored information with Mr. Vaisse?</p> <p>23 <b>A I'm sorry, could you repeat the</b> 24 <b>question, please?</b></p> <p>25 Q Let me phrase it a different way.</p>
<p>54</p> <p>1 you learned from your discussions with Mr. Vaisse in 2 preparation?</p> <p>3 <b>A Well, the factual information we</b> 4 <b>wanted to get from him is in relation to</b> 5 <b>electronically available e-mails from certain</b> 6 <b>employees, BIL employees, existing or former BIL</b> 7 <b>employees. That was the -- the main purpose or main</b> 8 <b>goal of the discussion.</b></p> <p>9 Q So I understand it, is what you 10 are saying that you spoke with Mr. Vaisse about 11 whether electronically stored information, including 12 e-mails, were available from certain BIL employees, 13 current and former, from the pre-2009 time frame?</p> <p>14 MR. BUTLER: Can I get that question 15 again.</p> <p>16 (Court reporter read back.)</p> <p>17 MR. BUTLER: That is getting kind of 18 specific about what exactly he discussed with 19 Mr. Vaisse. You can answer generally what the topic 20 of discussion was with Mr. Vaisse, but we are not 21 going to go into exactly what was said during that 22 conversation.</p> <p>23 BY MR. FLUGMAN:</p> <p>24 Q Do you need me to repeat the 25 question?</p>	<p>56</p> <p>1 Besides Ms. Salentiny and Ms. Totaro, were there any 2 other former or current BIL employees that you 3 discussed with Mr. Vaisse?</p> <p>4 <b>A Yes.</b></p> <p>5 Q Which employees?</p> <p>6 <b>A Marie Claire Meyers and Gianni</b> 7 <b>Baldinucci.</b></p> <p>8 Q Did you inquire about the 9 availability of electronically stored information, 10 including e-mails, for Mr. Baldinucci and Marie 11 Claire Meyers --</p> <p>12 <b>A Meyers, let me spell it.</b> 13 <b>M-E-Y-E-R-S.</b></p> <p>14 <b>I'm sorry, could you repeat.</b></p> <p>15 Q Yes. Did you inquire about 16 whether electronically stored information, including 17 e-mails, is available to BIL from Mr. Baldinucci and 18 Ms. Meyers from the pre-2009 time frame?</p> <p>19 <b>A Yes, we did inquire.</b></p> <p>20 Q Does BIL have access to any 21 electronically stored information from Ms. Meyers or 22 Mr. Baldinucci from pre-2009?</p> <p>23 <b>A No.</b></p> <p>24 Q We spoke about Ms. Totaro, you 25 indicated that you spoke to her in connection with</p>



December 14, 2022

<p>57</p> <p>1 preparation for the deposition. First, what is 2 Ms. Totaro's role at the bank? 3 <b>A At the time when the facts</b> 4 <b>occurred in relation to the actions, and even today,</b> 5 <b>she's working in the execution desk of the trading</b> 6 <b>markets.</b> 7 Q Could you describe what that 8 means? 9 <b>A Basically her role, or the role</b> 10 <b>generally of the execution desk, is that they --</b> 11 <b>they prepare the redemption and the subscription</b> 12 <b>orders in relation to the transfer agents.</b> 13 Q Do you understand that Ms. Totaro 14 was involved in the subscription and redemption in 15 the Fairfield fund that is at issue here? 16 <b>A Yes.</b> 17 Q Did you speak with Ms. Totaro 18 about whether she used e-mail to communicate in 19 relation to the subscriptions and redemptions at 20 issue here? 21 MR. BUTLER: Again, hold on. I object and 22 instruct the witness not to answer. You are going 23 into the discussion as opposed to just asking a 24 factual question. If you ask the factual question 25 we can get past my objection.</p>	<p>59</p> <p>1 you know that information you can answer. 2 <b>A I don't know.</b> 3 <b>BY MR. FLUGMAN:</b> 4 Q Did you -- strike that. 5 Ms. Totaro had access to e-mail during the 6 pre-2009 period, correct? 7 <b>A Correct.</b> 8 Q Do you have any reason to believe 9 that she didn't use e-mail in the course of her job 10 functions at BIL during that time period? 11 <b>A I have no reason to believe that</b> 12 <b>she did not use it.</b> 13 Q And just to be clear, you spoke 14 with Ms. Totaro in preparation for the deposition 15 today, and following that conversation you don't 16 know whether she used e-mail to communicate with 17 respect to the Fairfield funds? 18 <b>A That is correct.</b> 19 Q Do you know whether she used 20 e-mail to communicate with respect to the specific 21 subscription and redemption at issue in this case? 22 <b>A I don't know.</b> 23 Q Was part of Ms. Totaro's job 24 function to communicate with people outside the 25 bank?</p>
<p>58</p> <p>1 BY MR. FLUGMAN: 2 Q Sure. With that clarification, 3 did Ms. Totaro use e-mail to communicate with 4 respect to investments in the Fairfield funds? 5 <b>A Trade confirmations were done on</b> 6 <b>paper, everything was done on paper, which was</b> 7 <b>scanned afterwards into physical binders, copies.</b> 8 <b>And there were some internal e-mail exchanges as</b> 9 <b>well, yes.</b> 10 <b>And so -- I'm sorry, could you strike</b> 11 <b>that, please? Sorry.</b> 12 MR. BUTLER: Let me just state for the 13 record, I didn't want to interrupt the witness' 14 answer, but I think that falls outside the scope of 15 these topics. He is not testifying as a spokesman 16 for the bank on sort of what happened when the 17 redemption was made, but, you know, you can ask his 18 memory or his knowledge. 19 BY MR. FLUGMAN: 20 Q We can figure that out later. 21 What I want to know, and I think you said yes, is, 22 did Ms. Totaro use e-mail to communicate with 23 respect to investments in the Fairfield funds? 24 MR. BUTLER: Again, I object that it's 25 outside the scope of the topics, but Mr. Dewitte, if</p>	<p>60</p> <p>1 <b>A Yes.</b> 2 Q And was part of Ms. Totaro's job 3 function with respect to the Fairfield funds, and 4 the specific redemption and subscription at issue in 5 this case, to communicate with Citco? 6 MR. BUTLER: Again, I'll object that's 7 outside the scope. It's a very specific question. 8 You can answer. 9 MR. FLUGMAN: Disagree, but we can take 10 that up later. 11 BY MR. FLUGMAN: 12 Q If you know the answer to the 13 question, please answer. 14 <b>A I don't know.</b> 15 MR. BUTLER: Which topic are you on at 16 this point? 17 MR. FLUGMAN: I think it relates to 6. 18 But in any case, we have the witness' answer. We 19 can continue. 20 BY MR. FLUGMAN: 21 Q You also indicated you spoke with 22 Ms. Salentiny? 23 <b>A Correct.</b> 24 Q Remind me, please, what is her job 25 function at the bank?</p>

December 14, 2022

<p>61</p> <p>1       <b>A     Today she is working in</b> 2 <b>administration function, which is called Kes, but at</b> 3 <b>the time she was also -- at the time of the relevant</b> 4 <b>facts at hand, in relation to the action, she was</b> 5 <b>also working at the transaction desk, execution</b> 6 <b>desk. So she was at the time a colleague of Maria</b> 7 <b>Totaro.</b> 8       Q     Were her job functions at the 9 time -- and by -- to put some more specificity on 10 it, 2005 to 2008 similar to the ones that you 11 described with respect to Ms. Totaro? 12       <b>A     I think so, yes.</b> 13       Q     Did Ms. Salentiny have access to 14 e-mail during that time period? 15       <b>A     Yes.</b> 16       Q     Did Ms. Salentiny communicate 17 internally or externally with respect to the 18 Fairfield funds by e-mail? 19       <b>A     To the best of my knowledge -- I</b> 20 <b>don't have the answer to that question.</b> 21       Q     How long roughly did you speak 22 with Ms. Salentiny in preparation for the 23 deposition? 24       <b>A     Roughly it would be around 30</b> 25 <b>minutes.</b></p>	<p>63</p> <p>1 in preparation for today's deposition. I believe 2 everyone we have covered so far is a current BIL 3 employee. But you also mentioned that you spoke 4 with some former BIL employees. Could you please 5 give me the list of those people. 6       <b>A     Yes. I have spoken to Mary Claire</b> 7 <b>Meyers, Johnny Balducci and Benny Reiter, but</b> 8 <b>Benny is his nickname, do you say that?</b> 9       Q     Yes. 10       <b>A     His official name is Gannot, so</b> 11 <b>spelled G-A-N-N-O-T, I think so.</b> 12       Q     Anyone else besides those three 13 individuals? 14       <b>A     As being former BIL employees, no.</b> 15       Q     Is there anyone else that you 16 spoke to besides the seven people who are current 17 BIL employees and three former employees that you 18 just mentioned, other than counsel, with respect to 19 your preparation today? 20       <b>A     Yes.</b> 21       Q     Who are those people? 22       <b>A     Two employees from Kyndryl. And</b> 23 <b>Kyndryl, you spell that K-Y-N-D-R-Y-L.</b> 24       Q     Do you remember those individuals' 25 names?</p>
<p>62</p> <p>1       Q     Sitting here today you don't have 2 any reason to doubt that she would have used e-mail, 3 correct? 4       <b>A     I -- I don't know.</b> 5       Q     Okay. 6       <b>A     I don't know.</b> 7       Q     If that is your answer, then we 8 will move on. 9       MR. BUTLER: David, would this be a good 10 time for a break? We have been going for almost an 11 hour and a half now. 12       MR. FLUGMAN: Happy to take a break. 13       MR. BUTLER: If you're in the middle of 14 something I don't want to interrupt you. 15       MR. FLUGMAN: I was just about to ask -- 16 this is a good time for a break. 17       THE VIDEOGRAPHER: Going off the record. 18 The time is 10:58 a.m. 19       (Off the record.) 20       THE VIDEOGRAPHER: We are back on the 21 record. The time is 11:10 a.m. 22 23 BY MR. FLUGMAN: 24       Q     Mr. Dewitte, before the break we 25 were talking about individuals with whom you spoke</p>	<p>64</p> <p>1       <b>A     Yes. Malcolm Holm and Christoph</b> 2 <b>Pelletot. Pelletot, you would spell that like</b> 3 <b>P-E-L-L-E-T-O-T, if my memory is correct.</b> 4       Q     What role does Kyndryl play with 5 respect to BIL? 6       <b>A     Kyndryl is -- basically it's a</b> 7 <b>spin-off of IBM. And Kyndryl is taking care of</b> 8 <b>BIL's e-mail servers.</b> 9       Q     How long has Kyndryl provided that 10 service to BIL? 11       <b>A     I don't have the exact date --</b> 12 <b>basically I don't have that information. But as</b> 13 <b>long as I am aware of and working for the bank, IBM,</b> 14 <b>later on Kyndryl, always has been the service</b> 15 <b>provider to the bank.</b> 16       Q     Is that true before 2009, that 17 either IBM or Kyndryl was providing this service to 18 BIL? 19       <b>A     I don't have the exact</b> 20 <b>information, so I cannot confirm or infirm that, do</b> 21 <b>you say that, infirm? No?</b> 22       Q     I am not sure what you mean by 23 "infirm," but -- 24       <b>A     I cannot say yes or no.</b> 25       Q     Infer, perhaps?</p>

December 14, 2022

<p>65</p> <p>1       <b>A     Infer?</b></p> <p>2       Q     I don't want to put words in your</p> <p>3 mouth. When you say provides services to BIL, can</p> <p>4 you tell me at a general level what services Kyndryl</p> <p>5 provides?</p> <p>6       <b>A     Well, in relation to the e-mail</b></p> <p>7 <b>inboxes of employees, they host the server, I think</b></p> <p>8 <b>so. And they manage the e-mail service of</b></p> <p>9 <b>employees.</b></p> <p>10      Q     Do you know whether Kyndryl or IBM</p> <p>11 provided that service before 2009 for BIL?</p> <p>12      <b>A     I don't have that level of</b></p> <p>13 <b>information.</b></p> <p>14      Q     Did you speak with Mr. Holm and</p> <p>15 Mr. Pelletot separately or together?</p> <p>16      <b>A     Spoke with them together, with --</b></p> <p>17 <b>yeah, we spoke with them together.</b></p> <p>18      Q     When did that conversation take</p> <p>19 place?</p> <p>20      <b>A     Couple weeks ago, before the --</b></p> <p>21 <b>before today.</b></p> <p>22      Q     Was that conversation the only</p> <p>23 conversation that you had with Mr. Holm and</p> <p>24 Mr. Pelletot about the subject matter of today's</p> <p>25 deposition?</p>	<p>67</p> <p>1       Q     I will have a couple questions.</p> <p>2 But let me ask first about the mail journaling</p> <p>3 service that you mentioned. Can you describe the</p> <p>4 process by which that mail journaling process</p> <p>5 occurred?</p> <p>6       <b>A     Could you please define "process"?</b></p> <p>7       Q     Sure. Yes. What is involved in</p> <p>8 the mail journaling? What sorts -- what e-mails are</p> <p>9 journaled as part of the process that you described</p> <p>10 a moment ago that Kyndryl provides for the bank?</p> <p>11      <b>A     Okay. According to my</b></p> <p>12 <b>understanding, following the discussion we had with</b></p> <p>13 <b>them, and afterwards this was drafted in an e-mail,</b></p> <p>14 <b>otherwise -- because it is quite technical</b></p> <p>15 <b>information. They confirmed that this relates to</b></p> <p>16 <b>incoming and outgoing external e-mail traffic, so</b></p> <p>17 <b>incoming e-mails and outgoing e-mails.</b></p> <p>18      Q     As I understand it, if an e-mail</p> <p>19 was sent to somebody by a BIL employee to somebody</p> <p>20 outside the bank --</p> <p>21      <b>A     Exactly.</b></p> <p>22      Q     -- that e-mail would be captured</p> <p>23 by the journal?</p> <p>24      <b>A     Correct. That is my</b></p> <p>25 <b>understanding.</b></p>
<p>66</p> <p>1       <b>A     That was the only conversation.</b></p> <p>2 <b>There were some -- to be exhaustive, there were some</b></p> <p>3 <b>e-mail exchanges afterwards, yes.</b></p> <p>4       Q     What facts did you learn from</p> <p>5 speaking with Mr. Holm and Mr. Pelletot with respect</p> <p>6 to today's deposition?</p> <p>7       <b>A     Well, the facts we learned is that</b></p> <p>8 <b>Kyndryl provides two specific services to the bank,</b></p> <p>9 <b>which is important for the case at hand. The first</b></p> <p>10 <b>one is the mail journaling server and the second one</b></p> <p>11 <b>is the exchange server.</b></p> <p>12      <b>So, the mail journaling server, that</b></p> <p>13 <b>relates to incoming and outgoing external mail</b></p> <p>14 <b>traffic for BIL employees from ten years ago until</b></p> <p>15 <b>now. So this is the service they are providing</b></p> <p>16 <b>today.</b></p> <p>17      <b>And the second one is in relation to the</b></p> <p>18 <b>exchange server, which means active mailboxes for</b></p> <p>19 <b>existing employees or for disconnected mailboxes;</b></p> <p>20 <b>so, in other words, employees who left the bank six</b></p> <p>21 <b>months -- until six months ago. I don't know if</b></p> <p>22 <b>that is clear. So, they are able to retrieve active</b></p> <p>23 <b>mailboxes of existing employees or former employees</b></p> <p>24 <b>to the extent that they only have left six months</b></p> <p>25 <b>ago. Is that clear enough?</b></p>	<p>68</p> <p>1       Q     And the same would apply to an</p> <p>2 inbound e-mail from someone external e-mailing</p> <p>3 someone within the bank?</p> <p>4       <b>A     That is my understanding as well,</b></p> <p>5 <b>yes.</b></p> <p>6       Q     Is it your understanding that that</p> <p>7 journaling would take place automatically?</p> <p>8       <b>A     Automatically meaning --</b></p> <p>9       Q     Meaning that the individual BIL</p> <p>10 employee who sent or received that e-mail, did they</p> <p>11 need to take any additional steps to have that</p> <p>12 e-mail journaled, or was it an automatic function?</p> <p>13      <b>A     According to my understanding, it</b></p> <p>14 <b>is an automatic function.</b></p> <p>15      Q     And I believe you said that the</p> <p>16 journaling was kept for ten years?</p> <p>17      <b>A     That is correct, yes.</b></p> <p>18      Q     Do you know whether Kyndryl was</p> <p>19 providing this service to the bank in 2018?</p> <p>20      <b>A     That is information that I didn't</b></p> <p>21 <b>check. To the best of my knowledge, I think so.</b></p> <p>22      Q     Okay. I guess I have the same</p> <p>23 question with respect to 2015. Do you think that</p> <p>24 Kyndryl was providing -- strike that.</p> <p>25      Do you know whether Kyndryl provided mail</p>

December 14, 2022

<p>69</p> <p>1 journaling services to BIL in 2015?</p> <p>2 <b>A I have the same reply for you as I</b></p> <p>3 <b>provided previously. It is not a specific answer --</b></p> <p>4 <b>question. It is not a specific question we phrased.</b></p> <p>5 <b>But according to my understanding, as they have been</b></p> <p>6 <b>providing -- working with them for as long as I</b></p> <p>7 <b>know, should be.</b></p> <p>8 Q Just to be clear, you have been at</p> <p>9 the bank since 2002, correct?</p> <p>10 <b>A Exactly.</b></p> <p>11 Q In your experience, either Kyndryl</p> <p>12 or IBM was providing this type of service to the</p> <p>13 bank throughout your tenure?</p> <p>14 <b>A This is the first -- as I told you</b></p> <p>15 <b>before, I was never involved in any litigation. So,</b></p> <p>16 <b>it is the first time that I need to check this</b></p> <p>17 <b>information. So --</b></p> <p>18 Q Okay. That is fair. And again,</p> <p>19 the journaling, as you understand it, was kept for</p> <p>20 ten years, correct?</p> <p>21 <b>A Yes. And only ten years.</b></p> <p>22 Q So in assuming Kyndryl was</p> <p>23 providing services to BIL in 2015, Kyndryl should</p> <p>24 have had a record of all e-mails sent externally and</p> <p>25 received from outside the bank dating back to 2005,</p>	<p>71</p> <p>1 <b>A Relationship manager holds the</b></p> <p>2 <b>direct contact with the clients, meaning the</b></p> <p>3 <b>ultimate clients of the bank, not the internal</b></p> <p>4 <b>clients, but the ultimate clients; being the account</b></p> <p>5 <b>holders and/or the beneficial owners, in case the</b></p> <p>6 <b>account holder would be a legal entity.</b></p> <p>7 Q Do I understand that she would be</p> <p>8 communicating with people outside of BIL as part of</p> <p>9 her job?</p> <p>10 <b>A That is correct, yes.</b></p> <p>11 Q And the people with whom she would</p> <p>12 be communicating would be customers of the bank?</p> <p>13 <b>A Exactly.</b></p> <p>14 Q Those customers would include</p> <p>15 entities or individuals that worked with investment</p> <p>16 professionals at the bank to make investments in</p> <p>17 funds and stocks and the things you mentioned</p> <p>18 earlier?</p> <p>19 <b>A Yes, with a little nuance, if you</b></p> <p>20 <b>say that in English, that Marie-Claire Meyers was a</b></p> <p>21 <b>member of the wealth management business line, and</b></p> <p>22 <b>they only have contact with private clients, meaning</b></p> <p>23 <b>that they do not have any -- or not supposed to have</b></p> <p>24 <b>any contacts or direct contacts with, let's say,</b></p> <p>25 <b>investment managers or -- yes, institutional</b></p>
<p>70</p> <p>1 correct?</p> <p>2 <b>A If your assumption is correct,</b></p> <p>3 <b>then your deduction is correct as well. I follow</b></p> <p>4 <b>your reasoning.</b></p> <p>5 Q So the answer would be yes to my</p> <p>6 question?</p> <p>7 <b>A The answer would be yes to your</b></p> <p>8 <b>question.</b></p> <p>9 Q And the same thing in 2018,</p> <p>10 assuming Kyndryl was providing e-mail journaling</p> <p>11 services to BIL, there would be a journal of all</p> <p>12 e-mails external from the bank and internal to the</p> <p>13 bank that existed back to 2008?</p> <p>14 MR. BUTLER: Objection to form. You can</p> <p>15 answer the question.</p> <p>16 <b>A Yes.</b></p> <p>17 <b>BY MR. FLUGMAN:</b></p> <p>18 Q Turning to the other individuals</p> <p>19 that you mentioned, Ms. Meyers, Marie-Claire --</p> <p>20 <b>A Yes.</b></p> <p>21 Q -- what was her function at the</p> <p>22 bank before she retired?</p> <p>23 <b>A Relationship manager.</b></p> <p>24 Q Can you briefly describe what</p> <p>25 would be entailed in that position?</p>	<p>72</p> <p>1 <b>counterparts.</b></p> <p>2 Q So would Ms. Meyers communicate</p> <p>3 with anyone internal? Who in the bank would</p> <p>4 Ms. Meyers communicate with in respect to her job?</p> <p>5 <b>A All sorts of departments and</b></p> <p>6 <b>people. It is -- their job is -- well, their main</b></p> <p>7 <b>point of contact externally is the end client, of</b></p> <p>8 <b>course, then they have to liaise internally with</b></p> <p>9 <b>different other departments to make sure that the</b></p> <p>10 <b>end client is being serviced.</b></p> <p>11 <b>For instance, in case a client wants to</b></p> <p>12 <b>make an investment, she has to liaise with -- the</b></p> <p>13 <b>relationship manager, doesn't matter whether it is</b></p> <p>14 <b>Marie-Claire Meyers or somebody else, but the</b></p> <p>15 <b>relationship manager has to liaise with the</b></p> <p>16 <b>professionals or the other employees having this</b></p> <p>17 <b>specific competence.</b></p> <p>18 Q Sir, do you understand that</p> <p>19 Ms. Meyers was involved in the subscription and</p> <p>20 redemption that's at issue in this case?</p> <p>21 <b>A I understand, yes.</b></p> <p>22 Q And that she is one of the</p> <p>23 individuals that BIL has disclosed to the</p> <p>24 liquidators as having relevant information with</p> <p>25 respect to this case?</p>

December 14, 2022

<p style="text-align: right;">73</p> <p>1       <b>A     I understand, yes.</b></p> <p>2       Q     And in -- as part of her job, you</p> <p>3 would expect Ms. Meyers to have had communications</p> <p>4 with people outside the bank?</p> <p>5       <b>A     Absolutely, yes.</b></p> <p>6       Q     That would include the underlying</p> <p>7 client who subscribed and redeemed for shares in</p> <p>8 Fairfield that is at issue in this case?</p> <p>9       <b>A     That is correct, yes.</b></p> <p>10      Q     Did Ms. Meyers use e-mail to</p> <p>11 communicate with her clients at that time, at the</p> <p>12 relevant time frame, 2005 to 2008?</p> <p>13      <b>A     Yes, she did. Can I -- not</b></p> <p>14 <b>rephrase, but bring an additional piece of</b></p> <p>15 <b>information? Before the break you were also asking</b></p> <p>16 <b>questions in relation to -- I don't remember if it</b></p> <p>17 <b>was Maria Totaro or Marie-Anne Salentiny, whether</b></p> <p>18 <b>they used e-mails externally.</b></p> <p>19      <b>And I was hesitating. The reason why was</b></p> <p>20 <b>that when I started to work at the bank, mainly for</b></p> <p>21 <b>banking secrecy reasons not everybody had access to</b></p> <p>22 <b>send e-mails outside of the bank. Because -- well,</b></p> <p>23 <b>Article 41 of the law of '93 in relation to banking</b></p> <p>24 <b>secrecy is something important for Luxembourg</b></p> <p>25 <b>professionals. This is the reason why I was</b></p>	<p style="text-align: right;">75</p> <p>1       <b>A     Yes. The question you told me, do</b></p> <p>2 <b>you understand. So I agree and understand.</b></p> <p>3       Q     Do you understand -- do you have</p> <p>4 an independent basis that you know that those are</p> <p>5 the correct dates?</p> <p>6       MR. BUTLER: Are you asking him was he</p> <p>7 involved in those events or --</p> <p>8       MR. FLUGMAN: I'm asking if he knows that</p> <p>9 the subscription that is at issue in this case</p> <p>10 occurred in 2005, and that the redemption that</p> <p>11 occurred that is at issue in this case occurred in</p> <p>12 2007.</p> <p>13      <b>A     In preparation of the -- of this</b></p> <p>14 <b>deposition, I reviewed certain internal legal files,</b></p> <p>15 <b>or internal files in the legal department, and part</b></p> <p>16 <b>of that were the subscription and redemption forms,</b></p> <p>17 <b>which have been produced, as well as the account</b></p> <p>18 <b>statements of the client, of the underlying client.</b></p> <p>19 <b>BY MR. FLUGMAN:</b></p> <p>20      Q     Just to be clear, I think we are</p> <p>21 on the same page, but do you agree with me that the</p> <p>22 subscription that is at issue here was made in 2005</p> <p>23 and the redemption that is at issue here in this</p> <p>24 case was made in 2007?</p> <p>25      <b>A     I agree with you.</b></p>
<p style="text-align: right;">74</p> <p>1      <b>hesitating at the time, just for your information.</b></p> <p>2       Q     And did you speak with counsel</p> <p>3 about that correction during the break;</p> <p>4 clarification, I should say?</p> <p>5       MR. BUTLER: I will object to the question</p> <p>6 about discussion with counsel during the break. You</p> <p>7 can answer that yes or no as a general topic.</p> <p>8       <b>A     Yes.</b></p> <p>9      <b>BY MR. FLUGMAN:</b></p> <p>10      Q     Okay. Thank you. I appreciate</p> <p>11 the clarification. We will get back to that in a</p> <p>12 moment.</p> <p>13      I want to go back to Ms. Meyers and her</p> <p>14 e-mail communications with the underlying client who</p> <p>15 subscribed for and redeemed shares in the Fairfield</p> <p>16 funds at issue in this case. Do you agree with me</p> <p>17 that the subscription that was made in the Fairfield</p> <p>18 funds that relates to the redemption at issue in</p> <p>19 this case occurred in 2005?</p> <p>20      <b>A     I agree.</b></p> <p>21      Q     Do you also understand that the</p> <p>22 redemption for that underlying client occurred in</p> <p>23 2007?</p> <p>24      <b>A     I understand.</b></p> <p>25      Q     Do you agree with me?</p>	<p style="text-align: right;">76</p> <p>1       Q     So my question is -- and you</p> <p>2 already told me that Ms. Meyers communicated with</p> <p>3 the underlying client by e-mail with respect to</p> <p>4 those two events, the subscription in 2005 and the</p> <p>5 redemption in 2007.</p> <p>6       MR. BUTLER: Objection to form. You can</p> <p>7 answer.</p> <p>8       <b>A     The subscription, yes. We have a</b></p> <p>9 <b>copy of these e-mail exchanges. And the redemption,</b></p> <p>10 <b>I don't recall.</b></p> <p>11 <b>BY MR. FLUGMAN:</b></p> <p>12      Q     The copy that you referred to,</p> <p>13 that is a hard copy, paper copy, correct?</p> <p>14      <b>A     Correct, yes.</b></p> <p>15      Q     Just to clarify, the e-mail, at</p> <p>16 least on the subscription side that was sent between</p> <p>17 Ms. Meyers and the customer, that would have been an</p> <p>18 e-mail that was external to the bank, correct?</p> <p>19      <b>A     Correct, yes.</b></p> <p>20      Q     And so that e-mail, assuming that</p> <p>21 Kyndryl or IBM was providing the mail journaling</p> <p>22 services you described earlier in 2005, would have</p> <p>23 existed on the journaling platform until 2015, would</p> <p>24 you agree with me?</p> <p>25      <b>A     I agree with you.</b></p>

December 14, 2022

<p>77</p> <p>1 Q If Ms. Meyers had communicated</p> <p>2 with the external customer at the time of redemption</p> <p>3 in 2007, that e-mail would have resided on the mail</p> <p>4 journaling platform until 2017, would you agree with</p> <p>5 me?</p> <p>6 A Yes.</p> <p>7 Q Do you know whether Ms. Meyers had</p> <p>8 communications with other external parties relating</p> <p>9 to the subscription and redemption at issue in this</p> <p>10 case?</p> <p>11 A I am not aware of that</p> <p>12 information.</p> <p>13 Q Do you know whether she ever</p> <p>14 communicated with Citco, the funds administrator?</p> <p>15 A Marie-Claire Meyers, I don't have</p> <p>16 that information.</p> <p>17 Q Okay. Do you know whether she</p> <p>18 communicated with anybody at Fairfield Greenwich</p> <p>19 Group, the funds investment manager, with respect to</p> <p>20 the subscription and redemption at issue here?</p> <p>21 A I don't have that information</p> <p>22 either.</p> <p>23 Q How long did you speak with</p> <p>24 Ms. Meyers in preparation for the deposition today?</p> <p>25 MR. BUTLER: Object to the form of the</p>	<p>79</p> <p>1 Q Let's start with the general</p> <p>2 question and then we can go to the specific.</p> <p>3 A Mr. Baldinucci, when I told him</p> <p>4 the name of the client, initially he told me he</p> <p>5 didn't know the name of the client. He was not</p> <p>6 aware; after which I called Marie Claire Meyers.</p> <p>7 Because the name of the client, the account holder</p> <p>8 is a legal entity, and so the name of the legal</p> <p>9 entity did not ring a bell.</p> <p>10 For banking secrecy reasons, of course, I</p> <p>11 don't know. I didn't check to what extent he was</p> <p>12 entitled to have this information, but for banking</p> <p>13 secrecy reasons, I did not give the name of the</p> <p>14 ultimate beneficial owner.</p> <p>15 When I called afterwards Marie Claire</p> <p>16 Meyers, she told me that Mr. Baldinucci, he met and</p> <p>17 he had contact with the client on an occasional</p> <p>18 basis. So I called again Mr. Baldinucci, and then I</p> <p>19 gave the name of the beneficial owner and he</p> <p>20 confirmed that he did -- he had some occasional</p> <p>21 contacts with the client. But he was not managing</p> <p>22 the relationship of the accounts.</p> <p>23 Q How did Mr. Baldinucci have</p> <p>24 contact with the underlying client, with in-person</p> <p>25 meetings, phone calls, e-mails, do you know?</p>
<p>78</p> <p>1 question. You can answer.</p> <p>2 A I didn't meet her in person, it</p> <p>3 was on the phone, 15, 20 minutes roughly.</p> <p>4 BY MR. FLUGMAN:</p> <p>5 Q Do you recall when that</p> <p>6 conversation took place?</p> <p>7 A Couple of weeks ago, before today.</p> <p>8 Q Mr. Baldinucci, what was his role</p> <p>9 before he left the bank?</p> <p>10 A Before he retired? Both are</p> <p>11 retired.</p> <p>12 Q Yes, I understand.</p> <p>13 A His role, he was heading the team</p> <p>14 of relationship managers at that time. That was the</p> <p>15 team dedicating to journal-based clients, if my</p> <p>16 memory is correct. So, basically he was the boss of</p> <p>17 Marie Claire.</p> <p>18 Q Did Mr. Baldinucci communicate</p> <p>19 with the underlying client who made the subscription</p> <p>20 and redemption in the Fairfield funds that is at</p> <p>21 issue in this case?</p> <p>22 A Are you asking if he communicated</p> <p>23 with the client in relation to the subscriptions or</p> <p>24 redemptions, or are you asking if Mr. Baldinucci had</p> <p>25 contact with the clients, generally speaking?</p>	<p>80</p> <p>1 A Phone calls, and he told me</p> <p>2 that --</p> <p>3 MR. BUTLER: I know it is hard to do. Try</p> <p>4 to avoid talking about what he specifically told you</p> <p>5 as opposed to just providing the information that</p> <p>6 you learned. In other words, your answer doesn't</p> <p>7 need to take the form of what words were spoken</p> <p>8 during your privileged conversation with this former</p> <p>9 employee, but you can provide the factual</p> <p>10 information you learned.</p> <p>11 A Okay. Thank you. He talked with</p> <p>12 the client over the phone and he met him in his</p> <p>13 place.</p> <p>14 BY MR. FLUGMAN:</p> <p>15 Q When you say his place, do you</p> <p>16 mean the client's location?</p> <p>17 A Yes, sorry, the client's location.</p> <p>18 Q Did Mr. Baldinucci use e-mail to</p> <p>19 communicate with this client?</p> <p>20 A We didn't go into that detail.</p> <p>21 Q So you didn't ask that question?</p> <p>22 MR. BUTLER: Just a second. Let's get</p> <p>23 away from the conversation, and you can say whether</p> <p>24 you know the answer to the factual question, did he</p> <p>25 use e-mail, yes or no.</p>

December 14, 2022

<p>81</p> <p>1 BY MR. FLUGMAN:</p> <p>2 Q The question is specifically did</p> <p>3 he use e-mail to communicate with the underlying</p> <p>4 client we have been discussing?</p> <p>5 A I don't have that information.</p> <p>6 MR. BUTLER: I'll just say for the record,</p> <p>7 I know there is a very general topic 6 on document</p> <p>8 retention and destruction, but it does not seek</p> <p>9 information on this level of detail. Accordingly,</p> <p>10 Mr. Dewitte knows the information and I'm happy to</p> <p>11 let him answer the questions about things that he</p> <p>12 knows, but he has not been prepared to convey all</p> <p>13 the information about what Mr. Baldinucci knows or</p> <p>14 what Ms. Meyers may know. I just want to state that</p> <p>15 for the record.</p> <p>16 MR. FLUGMAN: And I will state for the</p> <p>17 record that I think the e-mail practices and use of</p> <p>18 the six custodians that were disclosed in the Rule</p> <p>19 26A disclosures is at the heart of what we are</p> <p>20 talking about. We don't have to agree on that here,</p> <p>21 we can take that up later. I appreciate</p> <p>22 Mr. Dewitte's --</p> <p>23 MR. BUTLER: I just want it to be clear</p> <p>24 that he hasn't been prepared to talk about this</p> <p>25 level of detail as a representative of the bank.</p>	<p>83</p> <p>1 A Well, basically, Mr. Reiter's role</p> <p>2 as being a member of the back office, their role is</p> <p>3 to make sure that the trade is appropriately being</p> <p>4 booked in the system of the bank, first of all.</p> <p>5 Secondly, they keep also in their archives</p> <p>6 the physical binders, the physical documents. It is</p> <p>7 also Benny Reiter who handed over the redemption and</p> <p>8 subscription files.</p> <p>9 Q In the course of Mr. Reiter's</p> <p>10 responsibilities at the bank, did he communicate</p> <p>11 externally with anybody?</p> <p>12 A I don't have that information.</p> <p>13 Q He did communicate internally with</p> <p>14 people like Ms. Meyers, Mr. Baldinucci and others,</p> <p>15 is that correct?</p> <p>16 A That is correct, yes.</p> <p>17 Q Do you know whether those</p> <p>18 communications took place over e-mail?</p> <p>19 A Yes. Internal, yes.</p> <p>20 Q Yes, they did take place over</p> <p>21 e-mail?</p> <p>22 A Yes, they did take place over</p> <p>23 e-mail.</p> <p>24 Q That is true for time frame before</p> <p>25 2009?</p>
<p>82</p> <p>1 But he does have information that I am happy to</p> <p>2 allow him to provide to you.</p> <p>3 BY MR. FLUGMAN:</p> <p>4 Q Do you know, did Mr. Baldinucci</p> <p>5 use e-mail to communicate with others in the bank</p> <p>6 during the time period 2005 to 2008?</p> <p>7 A That is not something I checked,</p> <p>8 but I presume so.</p> <p>9 Q You don't have any reason to doubt</p> <p>10 that he used it?</p> <p>11 A Yes.</p> <p>12 Q And he would be one of the people</p> <p>13 that had access to e-mail at the bank?</p> <p>14 A Yes.</p> <p>15 Q Finally you mentioned Benny or</p> <p>16 Jeannot Reiter. Please remind me, what was</p> <p>17 Mr. Reiter's role?</p> <p>18 A He was working at the back office</p> <p>19 at the -- he is also retired today, the three</p> <p>20 persons I mentioned are retired. And he was working</p> <p>21 at the back office at the time, back office of</p> <p>22 securities, the securities department.</p> <p>23 Q So with respect to the</p> <p>24 subscription and redemption that's at issue in this</p> <p>25 case, can you describe Mr. Reiter's role?</p>	<p>84</p> <p>1 A I don't have that information. I</p> <p>2 know I communicated with him through e-mail also</p> <p>3 after 2009.</p> <p>4 Q Do you have any reason to doubt</p> <p>5 that Mr. Reiter didn't use e-mail to communicate</p> <p>6 internally in the bank in the 2005, 2008 time frame?</p> <p>7 A No, I don't have any reason to</p> <p>8 doubt that.</p> <p>9 Q He would be somebody who had</p> <p>10 access to e-mail?</p> <p>11 A Internally, yes; externally, I</p> <p>12 don't know.</p> <p>13 Q Going back to the second service</p> <p>14 that you mentioned Kyndryl provided, or IBM</p> <p>15 potentially before that, the exchange service, do I</p> <p>16 understand correctly that e-mails -- the exchange</p> <p>17 service they provided hosted the e-mail accounts for</p> <p>18 BIL employees?</p> <p>19 A That is my understanding, yes.</p> <p>20 Q I believe you said that they</p> <p>21 hosted the active mailboxes and also some former</p> <p>22 employees' accounts, is that correct?</p> <p>23 A That is correct, to the extent for</p> <p>24 the former employees that they have left the bank</p> <p>25 within six months.</p>

December 14, 2022

<p>85</p> <p>1 Q Do I understand you correctly that</p> <p>2 when an employee retires or leaves the bank for</p> <p>3 whatever reason, the service would keep the last six</p> <p>4 months of e-mails, is that correct?</p> <p>5 A <b>That is correct, yes.</b></p> <p>6 Q Then after that six months, that</p> <p>7 account would be deleted?</p> <p>8 A <b>Technically, I don't know whether</b></p> <p>9 <b>it is deleted or not. In any case, we do not have</b></p> <p>10 <b>any access anymore. To my understanding, it does</b></p> <p>11 <b>not exist anymore, yes.</b></p> <p>12 Q Just to be clear, the bank would</p> <p>13 only have access to a retired or former employee's</p> <p>14 e-mail account for six months after that employee</p> <p>15 leaves the bank, correct?</p> <p>16 A <b>That is correct, yes.</b></p> <p>17 Q After that six months, the bank</p> <p>18 would no longer have access to the electronically</p> <p>19 stored information in that former employee's</p> <p>20 account, correct?</p> <p>21 A <b>That is correct, yes. That has</b></p> <p>22 <b>been confirmed by Kyndryl, yes.</b></p> <p>23 Q Mr. Baldinucci is a former</p> <p>24 employee, I think you said, correct?</p> <p>25 A <b>That is correct, yes.</b></p>	<p>87</p> <p>1 after 2009 or 2010?</p> <p>2 A <b>I would say three years, three to</b></p> <p>3 <b>four years ago.</b></p> <p>4 Q So 2018 or 2019?</p> <p>5 A <b>Roughly, yes.</b></p> <p>6 Q Roughly. Again, her e-mail</p> <p>7 account no longer exists because we are more than</p> <p>8 six months after she left the bank, correct?</p> <p>9 A <b>Yes.</b></p> <p>10 Q And sitting here today, the bank</p> <p>11 has no ESI available to it from Ms. Meyers?</p> <p>12 A <b>Correct.</b></p> <p>13 Q The same question with respect to</p> <p>14 Mr. Baldinucci, right, the bank has no ESI, sitting</p> <p>15 here today, relating to Mr. Baldinucci?</p> <p>16 A <b>As I defined previously, is much</b></p> <p>17 <b>broader than only e-mails. But yes, there are no --</b></p> <p>18 <b>checks have been performed in relation to their</b></p> <p>19 <b>e-mail inboxes, but I also have asked to colleagues</b></p> <p>20 <b>who are still working in the same team if any</b></p> <p>21 <b>information could be retrieved on common available</b></p> <p>22 <b>servers; so not inboxes, but servers of the</b></p> <p>23 <b>department.</b></p> <p>24 Q And is there information?</p> <p>25 A <b>No. It is an exercise that is has</b></p>
<p>86</p> <p>1 Q What year did he leave the bank?</p> <p>2 A <b>He left the bank mid last year, if</b></p> <p>3 <b>my memory is correct.</b></p> <p>4 Q Sorry. Mr. Baldinucci retired</p> <p>5 from BIL in the middle of 2021, correct?</p> <p>6 A <b>Yes. But -- yes.</b></p> <p>7 Q And we are now in December of</p> <p>8 2022, which is certainly more than six years (sic)</p> <p>9 into 2022, are Mr. Baldinucci's e-mails still</p> <p>10 available to BIL?</p> <p>11 A <b>Could you repeat the question,</b></p> <p>12 <b>please?</b></p> <p>13 Q Are Mr. Baldinucci's e-mails still</p> <p>14 available to BIL today?</p> <p>15 A <b>No.</b></p> <p>16 Q Is that because his e-mail account</p> <p>17 is -- it is more than six months after</p> <p>18 Mr. Baldinucci left the bank?</p> <p>19 A <b>Yes. Yes.</b></p> <p>20 Q Ms. Meyers, also a former</p> <p>21 employee, do you recall when she left the bank?</p> <p>22 A <b>Already a couple of years ago. It</b></p> <p>23 <b>is definitely prior to that six months period we</b></p> <p>24 <b>just discussed.</b></p> <p>25 Q Okay. She left the bank sometime</p>	<p>88</p> <p>1 <b>been performed --</b></p> <p>2 Q I understand. I appreciate the</p> <p>3 clarification. Just to be clear, sitting here</p> <p>4 today, the bank could not access any e-mails sent or</p> <p>5 received by Mr. Baldinucci during his tenure at the</p> <p>6 bank?</p> <p>7 A <b>Correct.</b></p> <p>8 Q Mr. Reiter, when did he leave the</p> <p>9 bank?</p> <p>10 A <b>Also a couple years ago, same time</b></p> <p>11 <b>period.</b></p> <p>12 Q Again, 2018, 2019?</p> <p>13 A <b>Yes, roughly speaking. I don't</b></p> <p>14 <b>have the exact dates in mind, but yes.</b></p> <p>15 Q Again, sitting here today, his</p> <p>16 e-mail account is not available to the bank because</p> <p>17 it is more than six months after he left the bank?</p> <p>18 A <b>Same reason applies as for Gianni</b></p> <p>19 <b>Baldinucci and Marie Claire Meyers, yes.</b></p> <p>20 Q There is one other person that is</p> <p>21 on -- that has been disclosed to us as potentially</p> <p>22 having relevant information in the case, and that's</p> <p>23 Chantal Reyter?</p> <p>24 A <b>Yes.</b></p> <p>25 Q Did you speak with Ms. Reyter in</p>



December 14, 2022

<p style="text-align: right;">89</p> <p>1 preparation for the deposition today?</p> <p>2 <b>A No, I did not.</b></p> <p>3 Q Is there a reason why not?</p> <p>4 MR. BUTLER: Objection. Instruct the</p> <p>5 witness not to answer.</p> <p>6 BY MR. FLUGMAN:</p> <p>7 Q Ms. Reyter is a former employee of</p> <p>8 the bank, is that right?</p> <p>9 <b>A That is correct, yes.</b></p> <p>10 Q Do you know what role Ms. Reyter</p> <p>11 held before she retired?</p> <p>12 <b>A Her name was also mentioned in</b></p> <p>13 <b>some of the documents which we have provided.</b></p> <p>14 Q Do you know when Ms. Reyter left</p> <p>15 BIL?</p> <p>16 <b>A Also couple years ago.</b></p> <p>17 Q So again, roughly 2018, 2019?</p> <p>18 <b>A Possibly, yes.</b></p> <p>19 Q And is there any electronically</p> <p>20 stored information from Ms. Reyter's e-mail account</p> <p>21 that is available to the bank today?</p> <p>22 <b>A No. Same reason applies as for</b></p> <p>23 <b>the persons retired.</b></p> <p>24 Q Because after six months the bank</p> <p>25 no longer has access to any of that information?</p>	<p style="text-align: right;">91</p> <p>1 I will just state for the record that those are</p> <p>2 documents that are responsive to request number 4 in</p> <p>3 our amended notice of deposition which is in the</p> <p>4 record as Exhibit 1.</p> <p>5 MR. BUTLER: Let me state for the record I</p> <p>6 disagree with that. Those are not covered by your</p> <p>7 document requests. They were only provided</p> <p>8 because -- they were not requested specifically in</p> <p>9 your document request, they were only provided</p> <p>10 because they were used on Monday to prepare</p> <p>11 Mr. Dewitte.</p> <p>12 MR. FLUGMAN: I appreciate that</p> <p>13 clarification and also appreciate if you don't</p> <p>14 interrupt me while stating my position, then you can</p> <p>15 state yours.</p> <p>16 MR. BUTLER: I'm sorry, I thought you were</p> <p>17 finished.</p> <p>18 MR. FLUGMAN: I was not. We think they</p> <p>19 are clearly called for by the request number 4,</p> <p>20 because they are materials that Mr. Dewitte used to</p> <p>21 prepare for the deposition today. They were</p> <p>22 requested on Monday and they were requested three</p> <p>23 times yesterday and were not produced until this</p> <p>24 morning.</p> <p>25 And two of the documents that were</p>
<p style="text-align: right;">90</p> <p>1 <b>A Yes.</b></p> <p>2 Q Is there anybody that you asked to</p> <p>3 speak to in connection with your preparation that</p> <p>4 refused to speak to you? Again, just a yes or no</p> <p>5 question.</p> <p>6 <b>A No.</b></p> <p>7 Q We mentioned a third category of</p> <p>8 preparation was discussions with your counsel, with</p> <p>9 Mr. Butler. I will preface this by saying I am not</p> <p>10 asking for anything you talked about with</p> <p>11 Mr. Butler. But can you tell me when you met with</p> <p>12 Mr. Butler in preparation for the deposition today?</p> <p>13 <b>A We met on Monday morning.</b></p> <p>14 Q For approximately how long?</p> <p>15 <b>A For a couple of hours. And we met</b></p> <p>16 <b>as well yesterday, also for a couple of hours.</b></p> <p>17 Q Was anyone present in the room</p> <p>18 besides you and Mr. Butler during those meetings?</p> <p>19 <b>A Besides from certain of the</b></p> <p>20 <b>persons I mentioned previously, and a certain point</b></p> <p>21 <b>of time an employee bringing coffee and water, no.</b></p> <p>22 Q Okay. There were a couple of</p> <p>23 documents that your counsel produced to us this</p> <p>24 morning that I understand you reviewed in connection</p> <p>25 with your preparation for the deposition on Monday.</p>	<p style="text-align: right;">92</p> <p>1 produced are in French. So we are going to do the</p> <p>2 best we can with them. I want to ask you just some</p> <p>3 basic questions. We may need to come back to this</p> <p>4 later.</p> <p>5 BY MR. FLUGMAN:</p> <p>6 Q My first question is, there was</p> <p>7 one document that was produced to us which is</p> <p>8 entitled, [REDACTED]</p> <p>9 [REDACTED]</p> <p>10 [REDACTED] Do you remember reviewing that document?</p> <p>11 <b>A Yes.</b></p> <p>12 Q And what facts did you learn from</p> <p>13 your review of that document that relate to your</p> <p>14 deposition testimony here today?</p> <p>15 <b>A Not much, to be honest. Because</b></p> <p>16 <b>it is a policy that</b> [REDACTED]</p> <p>17 [REDACTED]</p> <p>18 [REDACTED]</p> <p>19 [REDACTED]</p> <p>20 [REDACTED]</p> <p>21 Q And the other two policies which</p> <p>22 were in French, accepting clients' instructions,</p> <p>23 which is a loose translation from the French, and</p> <p>24 also what I understand to [REDACTED]</p> <p>25 [REDACTED], similar question, did you learn any</p>

December 14, 2022

<p style="text-align: right;">93</p> <p>1 facts from reviewing those two policies that relate 2 to your testimony today? 3 <b>A Not really, no, not of any</b> 4 <b>relevance.</b> 5 Q I want to talk a little bit about 6 the structure of BIL. You mentioned earlier that 7 BIL at one point was a member of the Dexia group, 8 and I believe you said that BIL was divested or spun 9 off from Dexia in roughly 2012, do I understand that 10 correctly. 11 <b>A That is correct. Dexia -- sorry,</b> 12 <b>BIL has been sold by Dexia in 2012. That is</b> 13 <b>correct, yes.</b> 14 Q Prior to 2012, BIL was part of the 15 Dexia group? 16 <b>A Correct.</b> 17 Q Is that true for the entire time 18 period after 2000 until the divestiture in 2012? 19 <b>A Yes.</b> 20 Q During that time period, did BIL 21 have a parent company? 22 MR. BUTLER: Objection to form. Which 23 time period are you asking about? 24 BY MR. FLUGMAN: 25 Q 2000 to 2012, before the</p>	<p style="text-align: right;">95</p> <p>1 BIL's information technology department report into 2 anybody at Dexia Holdings? 3 <b>A I don't have that level of</b> 4 <b>information available, neither did I check it. I</b> 5 <b>can assume they did, yes.</b> 6 Q Okay. BIL had an integration 7 technology group at that time? 8 <b>A I'm sorry?</b> 9 Q BIL did have an information 10 technology group at the time? 11 <b>A What do you mean by information</b> 12 <b>technology?</b> 13 Q A group of people who handled 14 electronic information, archiving, storage, that 15 sort of thing. 16 <b>A Yes.</b> 17 Q All right. I think we discussed 18 this, but did BIL at the time period before 2009, 19 2000 to 2009, invest on its own behalf or on behalf 20 of underlying clients? 21 <b>A Is my understanding correct that</b> 22 <b>you are asking did BIL invest on its own behalf</b> 23 <b>or -- and of its clients?</b> 24 Q Let me ask a better question. Did 25 BIL make investments on behalf of underlying clients</p>
<p style="text-align: right;">94</p> <p>1 divestiture. 2 <b>A Are you asking BIL being -- yes,</b> 3 <b>the parent company was Dexia Holding. You are</b> 4 <b>asking for the shareholder --</b> 5 Q Yes, I am asking who the parent 6 company of BIL was. 7 <b>A Of Dexia BIL was Dexia, yes.</b> 8 Q Did -- at that time, did BIL's 9 officers and directors report up into anyone at 10 Dexia Holdings? 11 <b>A That is correct, yes. There was</b> 12 <b>a -- I don't know if you can title it a functional</b> 13 <b>reporting.</b> 14 Q Okay. Did BIL's legal department 15 report into anyone at Dexia Holdings? 16 <b>A Yes.</b> 17 Q To whom did the BIL legal 18 department report? 19 <b>A It was the secretary general of</b> 20 <b>the Dexia Holding group, his name was at the time</b> 21 <b>Olivier van Heerstraeten, if my memory is correct.</b> 22 <b>Sorry, so van Heerstraeten is spelled V-A-N, space,</b> 23 <b>and I'm not 100 percent sure, but</b> 24 <b>H-E-E-R-S-T-R-A-E-T-E-N.</b> 25 Q At the relevant time period, did</p>	<p style="text-align: right;">96</p> <p>1 in funds and similar investment vehicles? 2 <b>A Yes.</b> 3 Q Were any of BIL's clients on 4 behalf -- on whose behalf it made investments 5 located in the United States? 6 <b>A At that time period?</b> 7 Q In the 2000 to 2009 time period, 8 yes. 9 <b>A It is possible. I don't have that</b> 10 <b>level of information.</b> 11 Q Is there any restriction in your 12 knowledge that would prevent a U.S. investor from 13 doing business with BIL? 14 <b>A Today it is quite complicated, but</b> 15 <b>at the time, I don't know. Today there is a</b> 16 <b>specific rule not to invest in -- with American</b> 17 <b>clients, yes.</b> 18 Q It is possible that clients at the 19 bank existed in the United States at the pre-2009 20 time frame? 21 <b>A It is a possibility, which I</b> 22 <b>didn't check.</b> 23 Q Okay. I think we may have talked 24 about this, but can you tell me what departments or 25 job functions at BIL were responsible for</p>

December 14, 2022

<p>97</p> <p>1 communicating with the clients who were interested 2 in investing in the Fairfield funds? 3 <b>A Well, I think it is important to</b> 4 <b>get something straight. Contrary to the feeder</b> 5 <b>funds which I named previously, Rafale and Blue Star</b> 6 <b>fund, which bank actively commercialized. BIL never</b> 7 <b>actively commercialized Fairfield feeder funds as</b> 8 <b>part of that.</b> 9 <b>So we only acted on an execution only</b> 10 <b>basis, meaning that it is true that you say it was</b> 11 <b>the bank -- the investments were made on behalf of</b> 12 <b>the bank, meaning that technically it is the bank</b> 13 <b>that will be mentioned into the shareholder's</b> 14 <b>register of the specific funds as a nominee.</b> 15 <b>But, contrary to the other funds, we acted</b> 16 <b>only in relation to Fairfield feeder funds upon an</b> 17 <b>execution only basis, which means that it was never</b> 18 <b>on our short list of investment advice. Basically</b> 19 <b>it was a fund that was picked up by certain clients</b> 20 <b>and specifically asked the bank to invest.</b> 21 <b>Q I understand that. My question,</b> 22 <b>though, is, the bank did make investments in</b> 23 <b>Fairfield on behalf of underlying customers, you</b> 24 <b>will agree with me?</b> 25 <b>A That is correct, yes.</b></p>	<p>99</p> <p>1 the funds administrator, with respect to the 2 Fairfield investments? 3 <b>A In relation to Citco, that would</b> 4 <b>be the back offices, in relation to the subscription</b> 5 <b>and the transfer -- subscription and redemption</b> 6 <b>forms, or the execution desk I mentioned earlier</b> 7 <b>before, for which Maria Totaro and Marie Anne</b> 8 <b>Salentiny were working.</b> 9 <b>Q What departments or people at BIL</b> 10 <b>were responsible for maintaining documents related</b> 11 <b>to investments in the Fairfield funds?</b> 12 <b>A Your question is quite broad, with</b> 13 <b>documents in relation to. There can be -- can you</b> 14 <b>be more specific or --</b> 15 <b>Client-related documentation, the account</b> 16 <b>opening forms of a client who invests in Fairfield,</b> 17 <b>would that be part of--</b> 18 <b>Q Yes. Who would maintain those</b> 19 <b>records?</b> 20 <b>A Well, all client-related</b> 21 <b>documentation is being stored internally in a tool</b> 22 <b>that is called Documentum, and you can find that</b> 23 <b>name in one of the procedures we have, so there are</b> 24 <b>document archiving procedure, which is the main tool</b> 25 <b>the bank uses to store information in relation to</b></p>
<p>98</p> <p>1 <b>Q Including the subscription and</b> 2 <b>redemption that is at issue in this case, correct?</b> 3 <b>A That is correct.</b> 4 <b>Q And there are also others not at</b> 5 <b>issue in this case where BIL also made investments</b> 6 <b>in Fairfield.</b> 7 <b>A That is correct.</b> 8 <b>Q Who in the bank would have</b> 9 <b>communicated with those underlying clients? What</b> 10 <b>types of people, not necessarily specific names.</b> 11 <b>A So your question is who was</b> 12 <b>liaising with these underlying --</b> 13 <b>Q Yes.</b> 14 <b>A -- clients in relation to</b> 15 <b>Fairfield funds?</b> 16 <b>Q Yes.</b> 17 <b>A Typically the relationship</b> 18 <b>manager. Because there is nobody of the investment</b> 19 <b>advice involved, or the discretionary portfolio</b> 20 <b>management involved. So it can only be -- because</b> 21 <b>it is execution only -- the relationship manager,</b> 22 <b>who acted upon the request -- specific request of</b> 23 <b>the clients.</b> 24 <b>Q And what types of people at the</b> 25 <b>bank were responsible for communicating with Citco,</b></p>	<p>100</p> <p>1 <b>clients.</b> 2 <b>Q Who determines what documentation</b> 3 <b>goes into the Documentum system?</b> 4 <b>A It is mentioned in the policy.</b> 5 <b>Q Do you recall independently?</b> 6 <b>A Yes. Typically account opening</b> 7 <b>forms, the investment profile, to the extent there</b> 8 <b>is one available, because that depends on -- I mean,</b> 9 <b>applicable regulation, the transfer orders. So, all</b> 10 <b>client-related documentation in relation to an</b> 11 <b>account.</b> 12 <b>MR. FLUGMAN: We have been going for</b> 13 <b>awhile. We will take a short break. Before we do</b> 14 <b>break, just a couple questions.</b> 15 <b>I see that you have a handwritten piece of</b> 16 <b>paper in front of you that you have been referring</b> 17 <b>to through the course of the deposition with respect</b> 18 <b>to some names and dates and the like.</b> 19 <b>Q Are you using that piece of paper</b> 20 <b>in order to aid your testimony here today to be able</b> 21 <b>to remember facts?</b> 22 <b>A Yes.</b> 23 <b>MR. FLUGMAN: We will ask for a copy of</b> 24 <b>the document that Mr. Dewitte is using to be</b> 25 <b>produced to us during the break.</b></p>

December 14, 2022

<p>101</p> <p>1 MR. BUTLER: Sure. Okay. If you want to 2 make a copy, that is fine. 3 MR. FLUGMAN: Let's go off the record. 4 THE VIDEOGRAPHER: We're going off the 5 record. The time is 12:05 p.m. 6 (Off the record.) 7 THE VIDEOGRAPHER: We are back on the 8 record. The time is 12:19 p.m. 9 BY MR. FLUGMAN: 10 Q Mr. Dewitte, before the break we 11 were talking a bit about the Documentum system, I 12 believe that is what it was called. Were there 13 documents relating to the transaction at issue in 14 this case saved to the Documentum system? 15 A No. 16 Sorry. Could you rephrase that, please? 17 Just repeat the question. 18 Q I'm happy to ask it again. I 19 think you said that there were certain types of 20 documents that were saved to the Documentum system, 21 and those included account opening statements, and 22 transaction records, is that true as well? 23 A Exactly, yes. 24 Q What I am asking is, did the bank 25 save documents relating to the subscription and</p>	<p>103</p> <p>1 Q Okay. I believe we talked about 2 this earlier, but BIL, sitting here today, has no 3 e-mails from 2008 and prior, is that right? 4 A That is correct. 5 MR. BUTLER: Objection to form. You can 6 answer. 7 BY MR. FLUGMAN: 8 Q Did you say that was correct? 9 A That is correct, yes. 10 (Exhibit 3 marked for identification.) 11 BY MR. FLUGMAN: 12 Q So, Exhibit 3 is a set of 13 documents that was produced to us by the bank in 14 connection with this litigation. Just to point out, 15 so you know, at the very bottom right-hand corner 16 there is a legend that says BIL with a number, that 17 is called a Bates stamp in American litigation, and 18 that indicates the party that produced the 19 information. 20 This is a set of documents that are 21 numbered BIL 1 through 74. I am just going to ask 22 you to flip through it, you do not have to look at 23 every page, but my question is going to be first 24 whether you have seen this collection of documents 25 before?</p>
<p>102</p> <p>1 redemption that's at issue in this case to that 2 system at any point? 3 A No. It did not. 4 Q Okay. Did the bank save any 5 documents relating to the underlying client who was 6 involved in the subscription and redemption in this 7 case to that system? 8 A Meaning account opening forms 9 or -- 10 Q Informing relating -- any 11 information relating to that client. 12 A Yes. Yes. 13 Q Does the bank still have that 14 information in its control? 15 A Yes. 16 Q Is that information that is stored 17 in physical form or electronic form? 18 A It is -- it is electronically 19 available, so it is an electronic tool in which 20 documents are being stored, physical documents or -- 21 yes, client-related documents are being stored. 22 Q Is there any information relating 23 to the Fairfield funds stored in the underlying 24 clients filed in the Documentum system? 25 A No.</p>	<p>104</p> <p>1 A Yes, I did. 2 Q Did you review this set of 3 documents in preparation for the deposition today? 4 A Yes. 5 Q Do you have an understanding of 6 what this set of documents is? 7 A Roughly, yes. 8 Q What is that, sir? 9 A Well, these are the -- this is a 10 copy of the binder that has been handed over by 11 Benny Reiter a couple years ago. This is an 12 abstract of a copy of that binder. 13 Q Mr. Reiter turned this over to -- 14 to whom did he turn it over, do you know? 15 A I don't have that exact 16 information available. Somebody in the legal 17 department. 18 Q And I believe you said that 19 Mr. Reiter turned this over a couple of years ago, 20 is that right? 21 A Yes. Yes. In 2010. 22 Q In 2010. Is this -- is this the 23 set of documents that you had referred to earlier 24 that you said was collected after August of 2010 25 when BIL received the notice and summons in the</p>

December 14, 2022

<p>105</p> <p>1 Fairfield case?</p> <p>2 A Correct.</p> <p>3 Q Do you know how this set of</p> <p>4 materials was assembled?</p> <p>5 A Well, this is information -- I</p> <p>6 mean this document contains the subscription and</p> <p>7 redemption forms which the execution desk and the</p> <p>8 back office had been working.</p> <p>9 Q Right. I understand that. You</p> <p>10 will also see, as you look through this or perhaps</p> <p>11 from your review, there are e-mails contained in</p> <p>12 this set of materials. I should say for the record</p> <p>13 this was produced to us in hard copy, and it is our</p> <p>14 understanding that at the time this was produced to</p> <p>15 the liquidators in this litigation, it existed only</p> <p>16 in hard copy, is that your understanding as well?</p> <p>17 A At the time it was produced to</p> <p>18 you, it only existed in hard copy, yes.</p> <p>19 Q When this set of materials was</p> <p>20 collected in 2010, did BIL print copies of the</p> <p>21 e-mails that are contained in this exhibit from its</p> <p>22 electronic servers?</p> <p>23 A That is my understanding, yes.</p> <p>24 Q So the e-mails -- the first one I</p> <p>25 believe appears at page 5 of the exhibit, that</p>	<p>107</p> <p>1 archiving of the back office, I have requested a</p> <p>2 copy of that and a copy has been produced to you.</p> <p>3 Q Okay.</p> <p>4 A I am not -- do you understand my</p> <p>5 nuance?</p> <p>6 Q I think so. Let me try and</p> <p>7 clarify. This set of documents that's Bates stamped</p> <p>8 BIL 1 through 74, did this exist in hard copy form</p> <p>9 in this complete set before August of 2010?</p> <p>10 A Yes. That is my understanding,</p> <p>11 yes.</p> <p>12 Q Does that include the e-mails that</p> <p>13 are contained within this --</p> <p>14 A Yes.</p> <p>15 Q -- as well as the subscription and</p> <p>16 redemption forms?</p> <p>17 A That is correct. That is my</p> <p>18 understanding, yes.</p> <p>19 Q Who decided which documents to</p> <p>20 include in this set of information at the time that</p> <p>21 it was created?</p> <p>22 A I don't have that information.</p> <p>23 Normally when a trade is being booked, all</p> <p>24 information -- important information relating to</p> <p>25 that trade should be documented.</p>
<p>106</p> <p>1 appears to be an e-mail exchange between [REDACTED]</p> <p>2 [REDACTED]</p> <p>3 Is it your understanding that in 2010 --</p> <p>4 August of 2010, when you said this was created, that</p> <p>5 somebody printed a copy of this e-mail and included</p> <p>6 it in the hard copy materials?</p> <p>7 A Could you repeat that, please.</p> <p>8 Q Yes, of course. I am using this</p> <p>9 as an example. My understanding, based on your</p> <p>10 testimony, is that when this hard copy set of</p> <p>11 materials was created in August or 2010 or soon</p> <p>12 thereafter, that this was printed from an e-mail</p> <p>13 account?</p> <p>14 A Okay. I have to -- thank you for</p> <p>15 that. I have to rectify that this was -- well, this</p> <p>16 kind of documents are not specifically assembled</p> <p>17 shortly after 2000 -- August of 2010. These</p> <p>18 documents, physical documents, they exist when</p> <p>19 subscription and redemption takes place. These</p> <p>20 documents are being kept physically in the</p> <p>21 appropriate departments, and at the end of a trade</p> <p>22 confirmation they are being stored in their</p> <p>23 archives.</p> <p>24 So what has been done for this exercise is</p> <p>25 that the physical binder has been taken out of the</p>	<p>108</p> <p>1 Q Is it your testimony that the</p> <p>2 information that's contained in Exhibit 3 fits that</p> <p>3 description?</p> <p>4 A To the best of my knowledge, yes.</p> <p>5 Q How was this file maintained at</p> <p>6 the time that it was created?</p> <p>7 A It is physical paper work,</p> <p>8 physical documents. The redemption and</p> <p>9 subscription, you may see for instance in this</p> <p>10 Exhibit 3 on page 3, or on page 13, I presume, even</p> <p>11 more on 14 and 15, at the time the redemptions and</p> <p>12 subscriptions were confirmed and requested through</p> <p>13 fax. So everything was made by means of paper work,</p> <p>14 or a lot was being done by paper work.</p> <p>15 Q You would agree with me, though,</p> <p>16 that there are many e-mails contained in this</p> <p>17 exhibit, correct?</p> <p>18 A Absolutely. Absolutely.</p> <p>19 Q And those e-mails are from</p> <p>20 people -- from and to people inside BIL to people</p> <p>21 outside the bank, including Citco, the funds</p> <p>22 administrator?</p> <p>23 A Yes.</p> <p>24 Q Do you know the process for</p> <p>25 selecting which e-mails were printed off and</p>

December 14, 2022

<p>109</p> <p>1 included in this file at the time this document was 2 created? 3 <b>A No. I am not aware of any</b> 4 <b>specific process in relation to printing out which</b> 5 <b>e-mail should be printed out or which one, no. But</b> 6 <b>I assume that all relevant e-mails should be</b> 7 <b>stored -- or are supposed to be stored in this</b> 8 <b>binder -- or these documents.</b> 9 Q What is that assumption based on? 10 <b>A Well, this is a Fairfield</b> 11 <b>investment. I also had a look on the Rafale and</b> 12 <b>Blue Star investments for which we have similar</b> 13 <b>binders, including also e-mail exchanges. So, it is</b> 14 <b>not a -- the fact that e-mails are printed out and</b> 15 <b>stored in physical files, that is not a surprise for</b> 16 <b>me. If your question relates to what extent are we</b> 17 <b>sure that it is exhaustive, we will never have the</b> 18 <b>answer to that.</b> 19 Q And we will go into this, but you 20 will agree with me that many of the e-mails 21 contained in this hard copy file that was produced 22 to us are incomplete, in that they don't contain the 23 entire e-mail chain, correct? 24 <b>A I'm not sure if I share your</b> 25 <b>opinion. If I look at the first e-mail chain, that</b></p>	<p>111</p> <p>1 the exhibit, I will represent that these were 2 produced to us as they were kept in the ordinary 3 course of business, at least that's the 4 representation by your counsel. The next page, BIL 5 42, appears to be a new e-mail, is that right? 6 <b>A That is right.</b> 7 Q So you would agree with me that 8 the attachment to the e-mail on page BIL 41 was not 9 produced? 10 <b>A Yes.</b> 11 Q That is because it wasn't printed 12 off at the time? 13 <b>A Yes.</b> 14 Q In 2010 when Mr. Reiter handed 15 this set of documents over to whomever in the bank 16 he handed it off, did BIL have access to this 17 e-mail? Could it have gone to the electronic copy 18 of the e-mail and printed off? 19 <b>A Could you repeat that question,</b> 20 <b>please.</b> 21 Q Sure. In August of 2010 or so, 22 when you testified that Mr. Reiter turned this set 23 of documents over to whomever in the bank he gave it 24 to, this set existed in paper copy, right? 25 <b>A Yes.</b></p>
<p>110</p> <p>1 <b>seems to be complete.</b> 2 Q Flip to page 41 of the exhibit. 3 Are you there, sir? 4 <b>A Yes. Sorry.</b> 5 Q Okay. This appears to be a 6 printout of an e-mail between [REDACTED] who 7 you will recall was one of the individuals that was 8 disclosed as having relevant information in this 9 case, who was an employee of BIL, [REDACTED] 10 [REDACTED] Citco who 11 is the fund's administrator, dated July 18, 2007. 12 And if you look down the page it appears that there 13 is a top e-mail that appears to be complete and the 14 bottom e-mail appears to be cut off, do you agree 15 with me? 16 <b>A Yes.</b> 17 Q Would you also agree with me, if 18 you look in the attachments line at the top of the 19 chain, you see that there is an indication that 20 there is a PDF that was attached to this e-mail? 21 Would you agree with me that that attachment was not 22 produced, not printed off? 23 <b>A Well, we don't have the</b> 24 <b>information.</b> 25 Q If you flip to the next page of</p>	<p>112</p> <p>1 Q Did a copy of this e-mail also 2 exist electronically at the bank at that time, three 3 years later? 4 <b>A I don't have that information.</b> 5 <b>Because it will depend to what extent the persons</b> 6 <b>involved have kept that e-mail, yes or no.</b> 7 Q Do you have any reason to believe 8 that Ms. Reyter deleted her copy of this e-mail 9 after 2007? 10 <b>A I don't know. I don't know.</b> 11 Q Turning back to page 5 of this 12 exhibit, which is the e-mail exchange between 13 [REDACTED] that we talked about a 14 moment ago. You will agree with me that there are 15 three attachments that appear at the top of the 16 page, do you see that, sir? 17 <b>A Yes.</b> 18 MR. BUTLER: Sorry, what page? 19 MR. FLUGMAN: Page 5 of the exhibit. 20 BY MR. FLUGMAN: 21 Q If you flip to page 8 of the 22 exhibit, that appears to be a new e-mail chain, 23 correct? 24 <b>A Correct.</b> 25 Q You will agree with me that the</p>

December 14, 2022

113

1 three attachments to this e-mail that begins on  
2 BIL 5 were not printed off, correct?  
3 **A Seems so, yes.**  
4 **Q** And therefore were not produced in  
5 this case?  
6 **A Yes.**  
7 **Q** And in fact, the e-mail exchange  
8 that begins on page 8 of the exhibit appears to be a  
9 similar e-mail, similar chain also attaching three  
10 attachments, and none of those appear to have been  
11 produced, correct?  
12 **A Correct.**  
13 **Q** Do you know why the attachments to  
14 these e-mails were not printed off at the time that  
15 this set of documents was created?  
16 **A No. I don't know. I don't have**  
17 **that information.**  
18 **Q** You will agree with me that if  
19 electronic versions of these e-mails existed at the  
20 time that BIL collected this information, that those  
21 attachments could have been preserved?  
22 **A That is a possibility, yes.**  
23 **Q** And you also agree with me that if  
24 the incomplete chains of e-mails that we looked at a  
25 moment ago on pages 41 and 42 of the exhibit had

114

1 existed in electronic form at the time that BIL  
2 collected information, that we would be able to see  
3 the full chain?  
4 **A Yes.**  
5 **Q** We would also be able to see the  
6 metadata that accompanied those e-mails, correct?  
7 **A Correct.**  
8 **Q** So we would be able to see, for  
9 example, if someone was blind copied on an e-mail,  
10 that wouldn't reflect in a printed version of the  
11 e-mail, correct?  
12 **A Correct.**  
13 **Q** And looking through this exhibit,  
14 you will agree with me that Ms. Reyter appears in  
15 several e-mails, correct, [REDACTED] ?  
16 **A Page 41?**  
17 **Q** Yes, on page 41, that is an e-mail  
18 [REDACTED], correct?  
19 **A Correct, yes.**  
20 **Q** And the same is true of [REDACTED] ?  
21 **A Correct.**  
22 **Q** And I believe the same is true of  
23 [REDACTED] ?  
24 **A Correct.**  
25 **Q** And these e-mails are between

115

1 [REDACTED] do you see  
2 that?  
3 **A Yes.**  
4 **Q** Which is an external communication  
5 from the bank?  
6 **A Yes.**  
7 **Q** And Citco again was the  
8 administrator of the funds, you agree?  
9 **A Yes.**  
10 **Q** And Ms. Salentiny also appears in  
11 several e-mails in this exhibit, and I'll just  
12 direct you to [REDACTED].  
13 **A She was copied --**  
14 **Q** She was [REDACTED].  
15 Looks like this e-mail was actually produced from  
16 Ms. Salentiny's inbox, because of her name at the  
17 top, you see that?  
18 **A Yes.**  
19 **Q** The same is true of the e-mail  
20 chain at page 27 of the exhibit. This one was  
21 produced from Totaro's e-mail box, but [REDACTED]  
22 [REDACTED], do you agree with me?  
23 **A I'm sorry, could you repeat that,**  
24 **please.**  
25 **Q** Of course. Just confirming that

116

1 again this is another example on page 27 of the  
2 exhibit of an e-mail that was received by  
3 Ms. Salentiny.  
4 **A Correct. Printed out Maria**  
5 **Totaro.**  
6 **Q** Yes, printed from Ms. Totaro's  
7 e-mail box, and also copied on this e-mail is  
8 Ms. Totaro and it's sent from Marie Claire Meyers,  
9 correct?  
10 **A (Witness nodding.)**  
11 **Q** This is example of an e-mail that  
12 was sent among internal people at the bank, correct?  
13 **A Correct. Yes.**  
14 **Q** And again, there appear to be some  
15 attachments here noted at the top, which were not  
16 printed off, correct?  
17 **A Correct. Yes.**  
18 **Q** These e-mails that appear in this  
19 document, [REDACTED]  
20 [REDACTED] you would agree with me  
21 that these are communications that constitute files  
22 relating to the Fairfield funds?  
23 **A Yes.**  
24 **Q** And is that why they were printed  
25 off and included in this document?

December 14, 2022

117

1 **A Well, they were printed out in the**  
2 **document because it is part of the subscription and**  
3 **redemption process, which happens to be for this**  
4 **deposition in relation to Fairfield, yes.**  
5 Q All the documents in this  
6 Exhibit 3 relate to a subscription and redemption of  
7 the Fairfield funds?  
8 **A Yes.**  
9 Q I think we talked a little bit  
10 about the fact that these files are not complete  
11 because they were printed in the way that whomever  
12 assembled the document chose to print them, is that  
13 right?  
14 **A Yes.**  
15 Q Again, do you know the -- do you  
16 know the person or the role at the bank that would  
17 have decided which documents to print off, including  
18 which e-mails to include in this set of documents?  
19 **A No, I don't have that information**  
20 **available. No.**  
21 Q Is there any policy or procedure  
22 that governs that process at the bank?  
23 **A Not that I am aware of, no.**  
24 Q Was it typical practice at the  
25 bank for printing off subscription, redemption

118

1 communications like the ones that appear in  
2 Exhibit 3 and assembling them in this way?  
3 **A Well, I don't know to what extent**  
4 **in this way -- I mean, "this way," what you define**  
5 **under that. But according to my understanding, the**  
6 **execution desk, the persons we just referred to and**  
7 **printed out these e-mails, they were working at the**  
8 **same execution desk. They were liaising with Citco,**  
9 **and they have printed out all the redemption and**  
10 **subscription documents. Some of them are e-mails,**  
11 **some of them are faxes, some were automatically**  
12 **generated -- the fax system that was automatically**  
13 **pre-generated, yes.**  
14 Q Somebody made a conscious decision  
15 to assemble this set of documentation relating to  
16 this subscription and redemption at issue here,  
17 correct?  
18 **A I don't know if it is a personal**  
19 **decision. For me, it was part of, according to my**  
20 **understanding, of the procedures that were in place**  
21 **at that time within that team, because all their**  
22 **similar subscriptions and redemptions have the same**  
23 **content.**  
24 Q What I mean is somebody decided  
25 which e-mails to print and include in this document,

119

1 and somebody made a decision to not print  
2 attachments, right?  
3 **A Correct.**  
4 Q Somebody made a decision to  
5 include only part of the e-mail chains, correct?  
6 **A Correct.**  
7 (Exhibit 4 marked for identification.)  
8 BY MR. FLUGMAN:  
9 Q So, Mr. Dewitte, we have handed  
10 you an exhibit marked as Exhibit 4. It is a  
11 document that was not produced by BIL, instead it  
12 was produced in another litigation involving the  
13 Fairfield funds and produced by a party in that  
14 litigation, as you will know by that Bates stamp on  
15 the bottom right-hand corner [REDACTED]  
16 [REDACTED]  
17 I will ask you first if you have ever seen  
18 this document before?  
19 **A No.**  
20 Q So, I will represent to you that  
21 the liquidators obtained this document from the  
22 parties in the Anwar litigation, and it appears to  
23 be an e-mail [REDACTED]  
24 [REDACTED]  
25 [REDACTED]

120

1 [REDACTED]  
2 [REDACTED]  
3 [REDACTED]  
4 [REDACTED]  
5 [REDACTED] do you see that?  
6 **A Yes, I see that.**  
7 Q And if you flip the page, the  
8 first e-mail in the chain is an e-mail from  
9 [REDACTED], do you  
10 see that?  
11 **A Yes.**  
12 Q And [REDACTED]  
13 [REDACTED]  
14 [REDACTED] do  
15 you see that?  
16 **A Yes.**  
17 Q If you flip to the front page, the  
18 first page of the exhibit, you will see that that is  
19 [REDACTED] And if you look on the  
20 attachments line you will agree with me that it  
21 indicates that [REDACTED]  
22 [REDACTED]  
23 [REDACTED] do you agree with me?  
24 **A I agree with you. It is not**  
25 **attached, but it is mentioned as attachment.**



December 14, 2022

121

1 Q That is true. Do you have an  
2 understanding as to why BIL didn't produce a copy of  
3 this e-mail?  
4 MR. BUTLER: Objection to form. And I  
5 think I will let you answer this question. But if  
6 you are going into sort of the decision making in  
7 response to your document requests, I don't think  
8 that is an appropriate area of inquiry, it would be  
9 privileged and work product.  
10 On reflection, I think I will instruct the  
11 witness not to answer. The way the question is  
12 phrased, I think it goes into the decision making of  
13 attorneys representing BIL in responding to your  
14 document requests.  
15 BY MR. FLUGMAN:  
16 Q Sir, do you know, does BIL  
17 currently possess a copy of this e-mail?  
18 A **As I told you before, this is the**  
19 **first time I have seen this. So the answer to your**  
20 **question is no.**  
21 Q No, you don't know, or no, BIL  
22 doesn't have a copy?  
23 A **I have never seen it, so, for me**  
24 **BIL does not have a copy.**  
25 Q The only BIL employee contained on

122

1 this particular e-mail chain is Ms. Salentiny,  
2 correct?  
3 A **Correct.**  
4 Q I think you testified earlier that  
5 BIL does not have any electronically stored  
6 information from Ms. Salentiny, correct?  
7 A **Absolutely. That is what she**  
8 **confirmed and that is what she checked afterwards,**  
9 **yes.**  
10 Q Sir, are you familiar with what an  
11 offer in memorandum is generally?  
12 A **Generally, yes.**  
13 Q Would you agree with me that an  
14 offer in memorandum is typically provided by a fund  
15 or funds investment manager to describe the strategy  
16 of the fund and its investment fee system and things  
17 like that?  
18 A **Yes, I agree.**  
19 Q Would you agree with me that  
20 potential investors in a fund are often provided a  
21 copy of the offer in memorandum before making a  
22 decision as to whether to invest?  
23 A **I agree.**  
24 Q [REDACTED]  
25 [REDACTED]

123

1 [REDACTED]  
2 [REDACTED]  
3 [REDACTED]  
4 A **Sorry, could you repeat that,**  
5 **please.**  
6 Q [REDACTED]  
7 [REDACTED]  
8 [REDACTED]  
9 [REDACTED]  
10 [REDACTED]  
11 [REDACTED]  
12 A **I agree.**  
13 (Exhibit 5 marked for identification.)  
14 BY MR. FLUGMAN:  
15 Q Mr. Dewitte, this is another  
16 e-mail that was produced in that same litigation in  
17 New York, [REDACTED]  
18 [REDACTED] It  
19 is a multipage document. Feel free to flip through  
20 it, if you would like.  
21 I would like you to also take out  
22 Exhibit 3, which is the big document, and if you  
23 could turn back to page 41 of that exhibit, sir,  
24 have the two side by side.  
25 A **Okay.**

124

1 Q So if you notice the new exhibit,  
2 Exhibit 5, the -- not the very top e-mail, but the  
3 second e-mail there, from [REDACTED]  
4 [REDACTED]  
5 [REDACTED] do you agree?  
6 A **I am checking.**  
7 Q Take your time.  
8 A **Yes.**  
9 Q And if you look at page 41 of  
10 Exhibit 3, [REDACTED]  
11 [REDACTED]  
12 [REDACTED] If you compare that back to the  
13 e-mail chain on Exhibit 50, you will --  
14 A **Exhibit 5?**  
15 Q I'm sorry, Exhibit 5. It was tab  
16 50 in my book. [REDACTED]  
17 [REDACTED]  
18 [REDACTED]  
19 [REDACTED] do you see?  
20 A **Yes.**  
21 Q And you will see that there is  
22 more to that e-mail from [REDACTED]  
23 [REDACTED] than appears on page 41 of Exhibit 3,  
24 correct?  
25 A **Correct. Yes.**

December 14, 2022

125

1 Q In fact, the e-mail chain in  
2 Exhibit 5 goes on for several more pages. [REDACTED]  
3 [REDACTED]  
4 that predate or precede the e-mails that are on the  
5 printed version of Exhibit 3, do you agree?  
6 A I agree.  
7 Q You will also agree with me that  
8 there is an e-mail at the very top of the chain from  
9 [REDACTED] that is a subsequent e-mail to  
10 the one that appears on page 41 of Exhibit 3,  
11 correct?  
12 A Subsequent, what do you mean?  
13 Q It is a response to the e-mail  
14 that appears at the top of page 41 of Exhibit 3, do  
15 you agree?  
16 A I agree.  
17 Q In that e-mail, [REDACTED]  
18 [REDACTED]  
19 [REDACTED]  
20 [REDACTED]  
21 [REDACTED]  
22 A It appears to be, but we don't  
23 have the attachment.  
24 Q Exactly. If BIL had had an  
25 electronic copy of this e-mail in its possession

126

1 when the documents were collected in 2010, we would  
2 have a copy of that attachment, right?  
3 A Right.  
4 Q But BIL didn't try -- didn't, in  
5 2010 when it was turning over documents relating to  
6 Fairfield, access an electronic copy of this e-mail  
7 and get the attachment, correct?  
8 A Correct.  
9 Q You will agree with me that this  
10 Exhibit 5 and this e-mail chain is [REDACTED]  
11 [REDACTED]  
12 A Well, I didn't go through all the  
13 previous -- the earlier e-mail exchanges, but it  
14 appears to be so. Because you reference the same  
15 subject, they seem identical, yes.  
16 Q We can go through it. I am happy  
17 to. The e-mails that were -- you will agree with me  
18 that the e-mails that are on page 1 of Exhibit 5 are  
19 contained within the larger Exhibit 3 that is the  
20 transaction file that was assembled relating to this  
21 specific transaction, right?  
22 A Right.  
23 Q So you will agree with me that  
24 this is the complete e-mail chain [REDACTED]  
25 [REDACTED]

127

1 [REDACTED] That was a poorly  
2 worded question.  
3 MR. BUTLER: Let me state for the record.  
4 A lot of these documents, especially ones that don't  
5 come from the files of BIL, the witness has been  
6 prepared to testify on the topic 6, which is  
7 general, not about specific e-mails and not about  
8 specific e-mails that are not within the possession,  
9 custody and control of BIL.  
10 So you can answer, but I just want to  
11 state that objection and make it clear for the  
12 record. He is not a spokesman for the bank on this  
13 question or many of the preceding questions.  
14 MR. FLUGMAN: We can have a discussion  
15 about that afterwards.  
16 BY MR. FLUGMAN:  
17 Q My, though, question is, this  
18 Exhibit 5 that is in front of you [REDACTED]  
19 [REDACTED] you will  
20 agree?  
21 A I agree.  
22 (Exhibit 6 marked for identification.)  
23 BY MR. FLUGMAN:  
24 Q The court reporter has just handed  
25 you another document, again [REDACTED]

128

1 [REDACTED] you will note from the Bates stamp at  
2 the bottom. This is another e-mail -- appears to be  
3 another e-mail exchange between this time  
4 [REDACTED]  
5 [REDACTED]  
6 [REDACTED]  
7 [REDACTED]  
8 Again, if you flip to the bottom e-mail,  
9 the last e-mail in the chain, do you see that  
10 [REDACTED]  
11 [REDACTED]  
12 [REDACTED] Do you see that on the  
13 exhibit?  
14 A Yes.  
15 Q If you flip to the first page of  
16 the exhibit, you will see that the individual from  
17 [REDACTED]  
18 [REDACTED]  
19 [REDACTED]  
20 [REDACTED] Do you see that?  
21 A Yes.  
22 Q I will represent to you that  
23 fggus.com was the domain name for the Fairfield  
24 Greenwich Group, which was the Fairfield funds  
25 investment manager.

December 14, 2022

129

1 Do you agree with me that this e-mail  
2 appears to show that [REDACTED]  
3 [REDACTED]  
4 **A** [REDACTED]  
5 [REDACTED]  
6 [REDACTED]  
7 [REDACTED]  
8 **Q** Okay. That is fair. [REDACTED]  
9 [REDACTED]  
10 [REDACTED]  
11 [REDACTED]  
12 **A** **Yes.**  
13 **Q** Are you aware -- I think we talked  
14 about this earlier -- that Fairfield Greenwich Group  
15 is located in the United States?  
16 **A** **I think you said that at the**  
17 **beginning.**  
18 **Q** Do you agree with me?  
19 **A** **Yes.**  
20 (Exhibit 7 marked for identification.)  
21 BY MR. FLUGMAN:  
22 **Q** This is another e-mail exchange  
23 that was obtained by the liquidators, and it is from  
24 a different source. You will see it doesn't have [REDACTED]  
25 [REDACTED] it is from a different source.

130

1 Again, appears to be an e-mail exchange numbering  
2 three pages involving various -- at least involving  
3 [REDACTED]  
4 [REDACTED]  
5 [REDACTED]  
6 [REDACTED]  
7 [REDACTED]  
8 [REDACTED]  
9 [REDACTED]  
10 [REDACTED] do you see that?  
11 **A** **I am checking their e-mails.**  
12 **Q** Take your time.  
13 **A** **Yes.**  
14 **Q** [REDACTED]  
15 [REDACTED]  
16 [REDACTED]  
17 [REDACTED]  
18 [REDACTED]  
19 **MR. BUTLER:** Objection to form.  
20 Mr. Dewitte has never seen this document, the same  
21 is true for the previous exhibits, and he certainly  
22 been prepared to say anything about these documents  
23 which are not even within the possession of --  
24 actually, I don't know if they are in the possession  
25 of BIL, because they don't relate to this case.

131

1 I just want to make it clear on the  
2 record, he is not prepared to be a spokesman on what  
3 an e-mail he has never seen before says. But you  
4 can answer the question.  
5 **MR. FLUGMAN:** I'll just state for the  
6 record that at least the previous exhibit actually  
7 was provided to counsel previously. Whether or not  
8 you prepared by it, that is not my call. And I am  
9 just -- I understand --  
10 **MR. BUTLER:** I have seen this document  
11 myself. But Mr. Dewitte has not. This is referring  
12 to Exhibit 6. I just want to make it clear. This  
13 is a 30(b)(6) deposition, he is here as a spokesman  
14 for the bank on particular topics, and I just need  
15 to be clear about what he can be a spokesman for the  
16 bank on and what he cannot be a spokesman for the  
17 bank on.  
18 **MR. FLUGMAN:** I understand.  
19 **MR. BUTLER:** He cannot be a spokesman on  
20 what a document we have never seen before says.  
21 **MR. FLUGMAN:** Well, that is an issue  
22 between us to sort out.  
23 BY MR. FLUGMAN:  
24 **Q** What I want to ask is,  
25 Ms. Salentiny is the BIL person [REDACTED]

132

1 [REDACTED] on this e-mail, correct?  
2 **A** **Correct.**  
3 **Q** And we established earlier that  
4 the bank no longer has Ms. Salentiny's e-mails,  
5 correct?  
6 **A** **Correct.**  
7 **Q** So this e-mail is not currently in  
8 the possession of BIL.  
9 **A** **Correct.**  
10 **MR. BUTLER:** I want object to the form of  
11 that question. Let me just state objection to form.  
12 BY MR. FLUGMAN:  
13 **Q** If you look on page 2 of the  
14 exhibit, Mr. Dewitte, I am just asking if it  
15 appears -- you will agree with me that [REDACTED]  
16 [REDACTED]  
17 [REDACTED] do you  
18 see that?  
19 **A** **Can I go first through the e-mail?**  
20 **Q** Please. Take your time.  
21 (Pause.)  
22 **A** **Thank you.**  
23 **Q** Of course. My question was, [REDACTED]  
24 [REDACTED]  
25 [REDACTED]

December 14, 2022

133

1 [REDACTED]  
2 [REDACTED] correct?  
3 A She refers to a specific  
4 subscription, yes.  
5 Q And she also says in the middle of  
6 the e-mail that's on page 2 of the exhibit that -- I  
7 will quote [REDACTED]  
8 [REDACTED]  
9 [REDACTED]  
10 [REDACTED] o you see that?  
11 A Yes, I see that.  
12 Q [REDACTED] goes on to say tha [REDACTED]  
13 [REDACTED]  
14 [REDACTED]  
15 [REDACTED] Do you see that?  
16 A Yes.  
17 Q It is clear from this e-mail that  
18 the fund that is being discussed is Fairfield.  
19 A Yes. Correct.  
20 Q And again, if BIL had preserved  
21 the ESI, the e-mails that were in Ms. Salentiny's  
22 account, this document would still be in BIL's  
23 control, correct?  
24 MR. BUTLER: Objection to form.  
25 BY MR. FLUGMAN:

134

1 Q You can answer.  
2 A Yes.  
3 (Exhibit 8 marked for identification.)  
4 BY MR. FLUGMAN:  
5 Q You will see, sir, this is another  
6 e-mail exchange that was obtained by the liquidators  
7 from that same source, the last e-mail we looked at.  
8 If you flip through the e-mail chain, and take your  
9 time, if you need to, I will just note that the last  
10 e-mail in the chain, which appears at the bottom of  
11 page 3 of the exhibit, subject line is [REDACTED]  
12 [REDACTED] Do you see that,  
13 sir?  
14 A I'm sorry, you're on which page?  
15 Q Page 3 of the exhibit. At the  
16 middle of the page, below the dotted line, there's  
17 an e-mail that was sent from [REDACTED]  
18 [REDACTED] do  
19 you see that?  
20 A Yes.  
21 Q Do you see that the subject line  
22 of that e-mail is [REDACTED]  
23 [REDACTED]  
24 A (Witness nodding.)  
25 Q You understand that [REDACTED]

135

1 [REDACTED] refers to BIL?  
2 A I am not sure. The reason why I  
3 am not sure is because -- first of all, I have never  
4 seen this e-mail before. But a speed read of this  
5 e-mail learns that they are referring that people  
6 attending to this meeting is [REDACTED]  
7 [REDACTED]  
8 [REDACTED]  
9 Perhaps you are aware of that, but Dexia  
10 at that time had its own investment vehicle, which  
11 was entitled -- today it is called Candra, it's part  
12 of the New York Life group, if my memory is correct.  
13 Previously it was called Dexia Asset Management.  
14 So, the people -- first person, [REDACTED]  
15 [REDACTED] I know for sure that he has been working for  
16 Dexia Asset Management for a very long time. And  
17 the two other persons referring, I never heard of  
18 them, which I would have if they would have been  
19 part of the BIL Luxembourg group.  
20 Q [REDACTED]  
21 [REDACTED] what was the relationship between BIL and  
22 the Dexia Asset Management that you just mentioned?  
23 A Dexia Asset Management was an  
24 independent asset manager investing the Dexia --  
25 well, it was acting as an independent asset manager

136

1 for Dexia-related funds. So, BIL and Dexia Asset  
2 Management at that time, and always have been, by  
3 the way, were two separate legal entities.  
4 Q At the time were both of those  
5 entities part of the Dexia group?  
6 A Yes, that is correct.  
7 Q My understanding, based on  
8 publicly available information, is that BIL -- let  
9 me rephrase my question.  
10 My understanding, based on publicly  
11 available information, was that in the time frame of  
12 at least 2010, BIL owned 51 percent of Dexia Asset  
13 Management Luxembourg. Does that comport with your  
14 understanding of the relationship?  
15 A That is possible. That is a  
16 possible. I didn't check the shareholdership of  
17 Dexia Asset Management before this deposition, but  
18 having worked with them previously, they were  
19 100 percent independent, a separate legal entity  
20 with their own board of directors, et cetera. And  
21 [REDACTED] at the time he was [REDACTED]  
22 [REDACTED] for Dexia Asset Management.  
23 Q Was there sharing of information  
24 learned about potential investments [REDACTED]  
25 [REDACTED] between Dexia Asset Management

December 14, 2022

137

1 and BIL?

2 MR. BUTLER: I'll object that we're way

3 outside the scope of any of these deposition topics.

4 But you can answer the question.

5 A Can you rephrase the question. I

6 am not sure I got the scope of the question.

7 BY MR. FLUGMAN:

8 Q Of course. Let me rephrase. If

9 somebody worked who for Dexia Asset Management, [REDACTED]

10 [REDACTED] had performed due diligence on a

11 potential investment that somebody at BIL wanted to

12 invest in, could the relationship manager or the

13 person at BIL who was discussing that potential

14 investment with an underlying BIL client, access

15 that diligence that was performed by Dexia Asset

16 Management?

17 MR. BUTLER: Same objection.

18 A I don't have that information.

19 BY MR. FLUGMAN:

20 Q Do you have any reason to believe

21 that they wouldn't be able to access that?

22 MR. BUTLER: Same is objection. He

23 doesn't know.

24 MR. FLUGMAN: I am asking the question.

25 He can answer it as he --

138

1 MR. BUTLER: It's a misleading question

2 based on his previous answer, but go ahead.

3 MR. FLUGMAN: I'm asking whether he has

4 any reason to doubt that someone at BIL could access

5 information gathered by Dexia Asset Management,

6 which is, I understand, an independent entity but

7 part of the Dexia group of families.

8 MR. BUTLER: Same objection.

9 A I don't have that degree of

10 information, so I cannot answer to that topic.

11 BY MR. FLUGMAN:

12 Q You will agree with me that at

13 least this e-mail suggests [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 MR. BUTLER: Just object as outside the

17 scope. You're asking the witness what an e-mail he

18 has never seen before that did not belong to BIL

19 suggests. That is not within the scope of this

20 30(b)(6).

21 BY MR. FLUGMAN:

22 Q I believe you shook your head yes.

23 Was your answer to the question yes?

24 MR. BUTLER: You can answer.

25 A Yes. Of course. It seems to be

139

1 tha [REDACTED]

2 [REDACTED]

3 (Exhibit 9 marked for identification.)

4 BY MR. FLUGMAN:

5 Q Again, this is a subsequent e-mail

6 from that same source that involves the same people

7 from the e-mail we just looked at. And of course

8 you should take a look at it as much as you would

9 like.

10 It appears to be an e-mail from somebody

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 MR. BUTLER: Same objection I made before.

20 A Sorry, just reading --

21 BY MR. FLUGMAN:

22 Q Sure.

23 A Okay.

24 Q So, again, my question, [REDACTED]

25 [REDACTED]

140

1 [REDACTED]

2 [REDACTED]

3 [REDACTED]

4 A Yes, and I want to highlight that

5 indeed the references of the e-mails confirms [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 Q Right. I understand that. We

9 don't know whether anyone from Dexia Asset

10 Management shared any [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 correct?

14 A I don't have that information.

15 Because the appendixes are not present either.

16 Q We don't have, for example, [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 correct?

20 A That is correct. Well, as I told

21 you before, I never heard of the names of these

22 people before. I know [REDACTED] personally,

23 because today he is -- [REDACTED]

24 [REDACTED]

25 [REDACTED] And after his long career at Dexia

December 14, 2022

141

1 Asset Management [REDACTED]  
2 [REDACTED] This is why  
3 I spotted this. But the other person, I don't know  
4 them and I never seen this e-mail before.  
5 Q I understand that. My question is  
6 really, the reason that -- strike that.  
7 If BIL still had access to e-mails from  
8 this time period from Mr. Balducci, Ms. Reyter,  
9 Ms. Salentiny and the others we've discussed that  
10 have had information relating to Fairfield, we would  
11 be able to see if there were communications between  
12 anyone at Dexia Asset Management and those  
13 individuals at BIL, right?  
14 MR. BUTLER: Objection to form. You can  
15 answer.  
16 A I am not sure to the extent that  
17 the -- as I told you before, contrary to Blue Star  
18 or Rafale Partners, Inc., these feeder funds, this  
19 one was never looked into by BIL. It was only  
20 execution only based. So our clients have picked  
21 these funds for which we of course invested as  
22 nominee.  
23 BY MR. FLUGMAN:  
24 Q We did see an example a couple  
25 exhibits ago of [REDACTED]

142

1 [REDACTED] correct?  
2 A Sure, yes.  
3 Q We just don't know whether a  
4 similar e-mail might exist between Ms. Salentiny or  
5 anyone else at BIL with this team [REDACTED]  
6 [REDACTED] correct?  
7 A Sure.  
8 Q Had those individuals' e-mail  
9 accounts been preserved we would have been able to  
10 check?  
11 A If your reasoning -- perhaps I am  
12 not supposed to argue with you, but if your  
13 reasoning was correct, then [REDACTED]  
14 [REDACTED]  
15 [REDACTED]  
16 [REDACTED]  
17 [REDACTED]  
18 Perhaps I am wrong, but I cannot confirm. We don't  
19 know.  
20 Q Sir, respectfully, that wasn't  
21 answering any of my questions. You will agree --  
22 MR. BUTLER: I think he answered it at the  
23 beginning. But you don't have to add any  
24 argumentation to the response.  
25 BY MR. FLUGMAN:

143

1 Q Sir, all I'm asking is, this  
2 e-mail appears to confirm that individuals from  
3 Dexia Asset Management [REDACTED] --  
4 (Reporter clarification.)  
5 MR. FLUGMAN: This e-mail, Exhibit 9, does  
6 appear to confirm that [REDACTED]  
7 [REDACTED]  
8 [REDACTED]  
9 [REDACTED] right?  
10 A Yes. That appears to be so, yes.  
11 Q And it also appears that [REDACTED]  
12 [REDACTED]  
13 [REDACTED]  
14 [REDACTED] correct?  
15 A Correct.  
16 Q Those documents are referenced in  
17 the middle of page 1 of the exhibit, correct?  
18 A Correct. And of the second page  
19 as well.  
20 Q Right. It references the  
21 attachments at the bottom, correct?  
22 A Correct.  
23 Q And at least those attachments  
24 appear [REDACTED]  
25 [REDACTED] correct?

144

1 A Correct. Yes.  
2 Q Do you know whether other entities  
3 within the Dexia family offered similar execution  
4 only services to its clients like BIL did with  
5 respect to the subscription and redemption at issue  
6 in this case?  
7 A Are you asking to me if other  
8 banks within the Dexia group at the time had  
9 invested with their clients in Fairfield?  
10 Q Yes.  
11 MR. BUTLER: I'll just object as outside  
12 the scope. You can answer.  
13 A I don't have that information.  
14 BY MR. FLUGMAN:  
15 Q Forgive me if you have testified  
16 to this, but did Dexia Asset Management have its own  
17 clients that it was marketing funds like the  
18 Fairfield funds to?  
19 A It depends on your definition of  
20 "own clients."  
21 Q Let me ask a different question.  
22 Do you have an understanding as to why Dexia Asset  
23 Management would [REDACTED]  
24 [REDACTED]  
25 MR. BUTLER: Outside the scope. You can

December 14, 2022

145

1 answer.  
2 A [REDACTED]  
3 [REDACTED]  
4 [REDACTED]  
5 [REDACTED]  
6 [REDACTED]  
7 BY MR. FLUGMAN:  
8 Q On whose behalf would they be  
9 [REDACTED]  
10 A I am less familiar with external  
11 asset manager, how they function, but I presume that  
12 they have their own investment strategy, and they  
13 potentially might have clients, I don't know,  
14 [REDACTED]  
15 [REDACTED]  
16 Q [REDACTED]  
17 [REDACTED]  
18 [REDACTED]  
19 MR. BUTLER: Objection. Outside the  
20 scope. You can answer.  
21 A Well, at the time Dexia Asset  
22 Management was the asset manager of the funds, all  
23 of the funds of the Dexia funds. So in that  
24 capacity, not only -- well, BIL clients invested in  
25 these funds, their funds, but also potentially

146

1 clients of other BIL entities in the funds being  
2 managed by Dexia Asset Management.  
3 Q So to answer my question, I take  
4 it that your answer to my question is [REDACTED]  
5 [REDACTED]  
6 [REDACTED]  
7 [REDACTED]  
8 [REDACTED] ight be  
9 considering making, is that fair?  
10 MR. BUTLER: Objection, outside the scope,  
11 mischaracterizes his testimony. But you can answer.  
12 A Again, I am not a specialist in  
13 external asset management. I presume that your  
14 assumption should be correct. If I would be working  
15 for an asset manager, I would be doing the same  
16 description of what you just did. But I cannot  
17 confirm that.  
18 BY MR. FLUGMAN:  
19 Q Just to recap the couple of  
20 exhibits we have looked at, we have seen examples of  
21 people at BIL [REDACTED]  
22 [REDACTED] correct?  
23 A Correct.  
24 Q [REDACTED]  
25 [REDACTED] You have to answer verbally.

147

1 A Correct. Sorry.  
2 Q [REDACTED]  
3 [REDACTED] correct?  
4 A Yes.  
5 Q [REDACTED]  
6 [REDACTED] correct?  
7 A Yes.  
8 Q [REDACTED]  
9 [REDACTED] correct?  
10 A [REDACTED] I  
11 don't recall seeing that, [REDACTED]  
12 Q You will agree that the e-mails we  
13 looked at are a subset of the e-mails that BIL once  
14 had that involved Fairfield, right?  
15 A I'm sorry, could you --  
16 Q We didn't look at every e-mail  
17 that someone at BIL sent or received related to the  
18 Fairfield funds, correct?  
19 A No. We didn't go through all the  
20 documents which is part of Exhibit, for instance, 3.  
21 Q And so if -- we have seen several  
22 individuals who we have talked about today,  
23 Ms. Reiter, Ms. Salentiny, M. Meyers, show up in  
24 these e-mails, and -- from this relevant time  
25 period, 2005 to 2008, right?

148

1 A Correct. Yes.  
2 Q And had the e-mail inboxes or  
3 e-mail accounts of those individuals been preserved  
4 at the time, we would have access to those e-mails  
5 today, correct?  
6 MR. BUTLER: Objection to form. You can  
7 answer.  
8 A Yes.  
9 MR. FLUGMAN: This is a good time to break  
10 for lunch.  
11 THE VIDEOGRAPHER: We are going off the  
12 record. The time is 1:31 p.m.  
13 (Off the record.)  
14 THE VIDEOGRAPHER: We are back on the  
15 record. The time is 2:30 p.m.  
16 (Exhibits 10 and 11 marked for identification.)  
17 BY MR. FLUGMAN:  
18 Q Mr. Dewitte, the court reporter  
19 has handed you Exhibits 10 and 11. I will represent  
20 to you that Exhibit 10 is a document that was  
21 produced by your counsel to us in connection with  
22 this deposition, and it is in French. Exhibit 11 is  
23 an English translation of that document that we had  
24 a service perform for us.  
25 If you flip to the back of Exhibit 11, you

December 14, 2022

149

1 will notice -- in the English language version, you  
2 will notice that there is a certificate of the  
3 translation from the translation service.  
4 I am going to be working from the English  
5 language version, but I invite you to keep the  
6 French language version in front of you as well. If  
7 you have any issue with the translation or you think  
8 something is not correctly stated in the English  
9 version, please tell me, otherwise I will assume  
10 that it is an accurate translation. Is that okay  
11 with you?  
12 **A Perfect.**  
13 **Q** Very good. So this document is  
14 Bates stamped BIL 000521. It appears to be an  
15 archive management policy [REDACTED] do  
16 you agree?  
17 **A Yes.**  
18 **Q** This document you recognize?  
19 **A Yes. Just give me a minute,**  
20 **please.**  
21 **Q** Of course.  
22 (Pause.)  
23 **A Yes.**  
24 **Q** And was this the [REDACTED] policy that  
25 you mentioned in your testimony earlier today?

150

1 **A Exactly, yes.**  
2 **Q** Did you review this document in  
3 connection with your preparation for today's  
4 deposition?  
5 **A Yes.**  
6 **Q** My first question is, this  
7 document [REDACTED] To your knowledge, was  
8 there any written policy in place at the bank prior  
9 to [REDACTED] that governed the subject matter of this  
10 policy?  
11 **A I don't have that information.**  
12 **Q** This policy that you have as  
13 Exhibits 10 and 11 came into effect on [REDACTED]  
14 [REDACTED] correct?  
15 **A Correct. Well, the dates of the**  
16 **policy. We can assume that it is in force around**  
17 **that date, yes.**  
18 **Q** If not on that precise date, then  
19 you would believe on or about that date?  
20 **A Exactly, yes.**  
21 **Q** I will represent to you that we  
22 have -- we will look at it in a moment -- another  
23 policy [REDACTED]  
24 [REDACTED]  
25 [REDACTED]

151

1 So my question to you is, are you in  
2 agreement that this policy we are looking at in  
3 Exhibits 10 and 11 governed throughout the time  
4 frame [REDACTED]  
5 **A Yes.**  
6 **Q** Directing your attention to the  
7 bottom of the first page of the exhibit, it says  
8 that [REDACTED]  
9 [REDACTED] is that correct?  
10 **A That is correct, yes.**  
11 **Q** [REDACTED]  
12 right?  
13 **A Correct, yes.**  
14 **Q** And just for my information [REDACTED]  
15 [REDACTED]  
16 [REDACTED] were they all part of the  
17 same bank, BIL?  
18 **A From a legal point of view, there**  
19 **is no difference. In certain countries, for**  
20 **instance Switzerland, there might be a difference.**  
21 [REDACTED] but it's  
22 not the case for Luxembourg, or in any case not for  
23 BIL.  
24 **Q** You will see later in that same  
25 paragraph that this policy sets forth [REDACTED]

152

1 [REDACTED]  
2 [REDACTED] correct?  
3 **A That is correct, yes.**  
4 **Q** Do you have a -- an understanding  
5 as to why [REDACTED] is in quotes in that sentence?  
6 **A No, is the short answer. The long**  
7 **answer would be -- but it's only a guess, I'm not**  
8 **supposed to guess here, is that [REDACTED]**  
9 [REDACTED] But I don't know,  
10 because I didn't draft this policy and I was not  
11 part of reviewing it from a legal point of view as  
12 well.  
13 **Q** If you don't know, you don't know.  
14 **A I don't know.**  
15 **Q** Let's look at page 2 of the  
16 policy. I am focused now on section 2.1, [REDACTED]  
17 [REDACTED] do you see  
18 that section?  
19 **A Yes.**  
20 **Q** Section 2.1.1 sets forth some  
21 [REDACTED] do you  
22 see that?  
23 **A Yes.**  
24 **Q** So in the second paragraph,  
25 beginning, [REDACTED] do you see that?



December 14, 2022

153

1 A In the second paragraph?

2 Q Second paragraph, under section

3 2.1.1, it says, [REDACTED]

4 A I'll take the English version as

5 well, it will be easier. Yes, I see that.

6 Q And it says that [REDACTED]

7 [REDACTED]

8 [REDACTED] o you see that?

9 A Yes.

10 Q It says that documents [REDACTED]

11 [REDACTED]

12 [REDACTED] correct?

13 A That is correct, yes.

14 Q There is nothing in this section

15 2.1.1 that limits it [REDACTED],

16 [REDACTED],

17 correct?

18 A Distinction is not made.

19 Q In fact, I think we talked a

20 moment ago, this policy is specifically designed to

21 [REDACTED]

22 right?

23 A Yes.

24 Q So, when BIL or individuals at BIL

25 communicated with clients, underlying customers of

154

1 the bank, about executing investments, how would

2 those be characterized with reference to this

3 section of the policy? [REDACTED]

4 [REDACTED]

5 A [REDACTED]

6 [REDACTED]

7 Q Okay. And what about if -- when

8 somebody at BIL communicated with a fund

9 administrator like Citco, how would that be

10 characterized, [REDACTED]

11 A That is a good question. It is a

12 good question. I don't have the answer to that. I

13 should do -- I don't have the answer to that.

14 Q Okay. I think the distinction

15 that you made with respect to [REDACTED]

16 [REDACTED]

17 [REDACTED] Would you agree with me that a fund

18 administrator is a type of investment professional?

19 A Yes. But then it has to be

20 checked in accordance with the law to an extent it

21 would be seen as a professional in accordance with

22 this definition under the code of commerce.

23 Q Okay. So would you agree with me

24 that communications with a fund administrator like

25 Citco would qualify as either [REDACTED]

155

1 [REDACTED] and you are just not sure which?

2 A Yes.

3 Q So under this policy, I'm looking

4 specifically at section 2.1.1, [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED] is that

8 right?

9 A That is right, yes.

10 Q And then [REDACTED]

11 [REDACTED] do

12 you see that?

13 A Yes.

14 Q And that sets fort [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 [REDACTED] Do you see that?

23 A Yes.

24 Q You can consult the translation as

25 you like. I was quoting directly from our

156

1 translated copy.

2 A Yes.

3 Q Would you agree with me that for

4 [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED] right?

9 A Could you repeat that, please?

10 Q Yes, what I am asking is [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED] do

17 you agree?

18 A That is what is written in there,

19 yes.

20 Q For example, if a letter had been

21 sent by someone at BIL to somebody at Citco, for

22 example, in April of 2005, then under this policy,

23 that letter, in whichever form it existed, [REDACTED]

24 [REDACTED]

25 [REDACTED]

December 14, 2022

157

1 A [REDACTED]  
2 Q [REDACTED]  
3 And you would agree with me that -- strike  
4 that.  
5 Throughout this document, BIL [REDACTED]  
6 [REDACTED]  
7 [REDACTED] correct?  
8 A That is correct, yes, that's the  
9 retention period.  
10 Q That is -- sorry.  
11 A The retention period of documents,  
12 yes.  
13 Q Is it fair to say that as a  
14 general matter, BIL's policy was to [REDACTED]  
15 [REDACTED]  
16 [REDACTED]  
17 A Could you repeat that, please?  
18 Q Sure. Is it fair to say that as a  
19 general matter, BIL's policy was to [REDACTED]  
20 [REDACTED]  
21 [REDACTED]  
22 A Yes.  
23 Q Are you aware of any other  
24 applicable policies that would recommend that BIL  
25 [REDACTED]

158

1 A To the best of my knowledge, no.  
2 Q So [REDACTED]  
3 [REDACTED]  
4 [REDACTED]  
5 [REDACTED]  
6 [REDACTED]  
7 [REDACTED]  
8 [REDACTED]  
9 [REDACTED]  
10 correct?  
11 A I am not sure [REDACTED]  
12 [REDACTED]  
13 [REDACTED]  
14 [REDACTED]  
15 [REDACTED] I am not sure.  
16 Q I thought a moment ago you  
17 testified that [REDACTED]  
18 [REDACTED]  
19 [REDACTED] did I understand you  
20 correctly?  
21 A True, to the extent that it leads  
22 to a purchase order, you know, that investment is  
23 ultimately made. I am not sure to what extent all  
24 communication in relation to clients is being  
25 covered by this policy.

159

1 Q You would agree with me that [REDACTED]  
2 [REDACTED]  
3 [REDACTED]  
4 [REDACTED]  
5 A Exactly, yes. Typically the  
6 communications -- sorry.  
7 Q [REDACTED]  
8 [REDACTED]  
9 [REDACTED]  
10 [REDACTED] do you see that?  
11 A Where are you referring to now?  
12 Q Sure. I'm referring to -- in  
13 paragraph -- the second paragraph under section  
14 2.1.1, where it discusses [REDACTED]  
15 [REDACTED]  
16 [REDACTED] do you see that?  
17 A And you are now in section --  
18 Q 2.1.1, paragraph 2. [REDACTED]  
19 [REDACTED]  
20 [REDACTED]  
21 [REDACTED] do you see that?  
22 A Okay, yes.  
23 Q The very last -- the end of the  
24 second line says, quote, [REDACTED]  
25 [REDACTED]

160

1 [REDACTED] right?  
2 A [REDACTED] yes.  
3 Q [REDACTED]  
4 [REDACTED] correct?  
5 A [REDACTED]  
6 [REDACTED] es.  
7 Q And those documents -- supporting  
8 documents relating to the bank's transactions for  
9 its customers, do you agree?  
10 A Yes. To the extent it is  
11 important information in relation to a client, yes.  
12 Q So my question is, if there were  
13 communications, [REDACTED]  
14 [REDACTED]  
15 [REDACTED] those would be covered by section 2.1.1,  
16 correct?  
17 A If these are [REDACTED]  
18 [REDACTED] yes, I agree with you. But if [REDACTED]  
19 [REDACTED]  
20 [REDACTED]  
21 [REDACTED]  
22 [REDACTED]  
23 Q Can you point to me somewhere in  
24 this section where it makes that distinction?  
25 A It does not.

December 14, 2022

161

1 Q So, again --

2 A **But on the other hand,** [REDACTED]

3 [REDACTED]

4 Q I think we can agree that [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 A [REDACTED]

12 [REDACTED]

13 Q [REDACTED]

14 [REDACTED]

15 A [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 Q Okay. Let's be more concrete.

19 The transaction at issue in this case actually

20 occurred, right, both the subscription and the

21 redemption. [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 [REDACTED] under the

25 terms of this policy, correct?

162

1 A **Yes.**

2 Q Okay. Later on in the policy

3 there is a discussion [REDACTED] I

4 believe that begins on page 5, section 3. Do you

5 see that, sir?

6 A **Yes. I'm sorry. I'm looking at**

7 **both procedures at the same time.**

8 Q I understand. Please take your

9 time looking at both, because I recognize that you

10 have the two versions in front of you.

11 Can you describe for me what [REDACTED]

12 [REDACTED]

13 A **Well,** [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 Q Do you know whether each BIL

18 department [REDACTED]

19 [REDACTED]

20 A **I don't have the information that**

21 **all departments have implemented** [REDACTED]

22 [REDACTED]

23 Q The policy does, though, apply to

24 [REDACTED] correct, we covered

25 that earlier?

163

1 A **Yes.**

2 Q Do you know whether the department

3 responsible for the transaction at issue in this

4 case, the investments -- investment -- the

5 subscription and redemption from Sentry, do you know

6 whether that department had [REDACTED]

7 A **I don't have that information.**

8 Q One of the purposes of [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 A **I'm sorry, which number --**

13 Q If [REDACTED]

14 [REDACTED]

15 A **3-point --**

16 Q 1.1.

17 A **Okay.**

18 Q If you look at -- I'm looking

19 again at the English translation, before the

20 indented bullets, do you see there is a series of

21 bullets on that page? Right above that, I'm quoting

22 from the policy, English translation, [REDACTED]

23 [REDACTED]

24 [REDACTED]

25 [REDACTED] Do you see

164

1 that?

2 A **Yes.**

3 Q So, [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 A **Could you rephrase that, please.**

8 Q Sure. Do you know -- [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 A **It refers to in this policy, for**

14 **sure, but then on the other hand there are other**

15 **regulations potentially to be taken into account,**

16 **typically GDPR. I don't know to what extent this**

17 **has been taken into account,** [REDACTED]

18 [REDACTED] **I know for sure**

19 **it was not taken from -- it did not exist at that**

20 **time.**

21 Q Would you agree with me that when

22 assessing how to [REDACTED] under this

23 policy, to the extent that other regulations like

24 the GDPR that you just mentioned apply, the bank

25 would need to examine the applicable policies and

December 14, 2022

165  
1 regulations and comply with the most stringent of  
2 them?  
3 **A Yes.**  
4 **Q** If the GDPR provided that  
5 documents of a certain kind needed to be kept for  
6 more than ten years, then the bank would hold the  
7 documents for more than ten years, correct?  
8 **A In theory, yes. In practice, I**  
9 **know the GDPR obliges service providers to keep data**  
10 **for a certain point of time and only for a certain**  
11 **point of time, and I know for sure that a lot of**  
12 **data -- all service providers, well, they have**  
13 **difficulties in complying with that obligation.**  
14 **Q** Can I direct your attention on  
15 that point to page 3 of this policy. It is the top  
16 sentence on that page. [REDACTED]  
17 [REDACTED]  
18 [REDACTED]  
19 [REDACTED]  
20 The first sentence of page 3 of the  
21 exhibit says, and I'm quoting, [REDACTED]  
22 [REDACTED]  
23 [REDACTED]  
24 [REDACTED]  
25 [REDACTED]

166  
1 [REDACTED]  
2 [REDACTED]  
3 So you will agree with me that if a  
4 document is covered by this policy, [REDACTED]  
5 [REDACTED]  
6 [REDACTED] correct?  
7 **A Yes.**  
8 **Q** It is possible that another  
9 provision of law might call for a longer  
10 preservation period, correct? Is that a yes?  
11 **A Yes. Sorry.**  
12 **Q** But at a minimum under this policy  
13 [REDACTED]  
14 **A Yes.**  
15 **Q** With respect to -- going back to  
16 section 3.1 [REDACTED]  
17 [REDACTED]  
18 [REDACTED]  
19 [REDACTED]  
20 [REDACTED]  
21 [REDACTED]  
22 **A** [REDACTED]  
23 **Q** [REDACTED]  
24 [REDACTED]  
25 **A No.**

167  
1 **Q** In practice, [REDACTED]  
2 [REDACTED]  
3 [REDACTED]  
4 **MR. BUTLER:** Let me just object. The  
5 topic is policies, and not practices. This witness  
6 is not prepared to testify or has not been prepared  
7 to testify about all the practices within the bank.  
8 With that objection, you can answer.  
9 **A I don't have the answer. As I**  
10 **referred to earlier, the GDPR, certain kinds of**  
11 **information needs to be destroyed at a certain point**  
12 **of time. Whether or not that the bank is not ready**  
13 **from an operational point of view, this is something**  
14 **that has been checked previously with Nicholas**  
15 **Vaisse, the person I referred to earlier, which he**  
16 **confirms doing with his preparation meeting.**  
17 **Q** [REDACTED]  
18 [REDACTED]  
19 [REDACTED]  
20 [REDACTED]  
21 [REDACTED]  
22 **MR. BUTLER:** Objection to form. You can  
23 answer.  
24 **A I don't have that knowledge. Not**  
25 **that I am aware of, no.**

168  
1 **BY MR. FLUGMAN:**  
2 **Q** [REDACTED]  
3 [REDACTED]  
4 [REDACTED]  
5 **A Yes.**  
6 **Q** [REDACTED]  
7 [REDACTED]  
8 [REDACTED]  
9 [REDACTED]  
10 [REDACTED]  
11 [REDACTED]  
12 **A That is correct.**  
13 **Q** Speaking more broadly with respect  
14 to policies at BIL, including this one, can you  
15 describe how BIL enforced compliance with  
16 retention -- with the retention and deletion  
17 policies at the bank?  
18 **MR. BUTLER:** Again, I'll just object that  
19 that is outside the scope of the policies. You can  
20 answer, if you can.  
21 **A Is my understanding correct that**  
22 **your question relates to if I have any knowledge**  
23 **about how -- how compliant -- how these procedures**  
24 **or policies are being followed up or checked upon?**  
25 **BY MR. FLUGMAN:**

December 14, 2022

<p>169</p> <p>1 Q Yes, so let's make the question</p> <p>2 more specific. Let's talk about this policy. After</p> <p>3 this policy was issued [REDACTED] what did BIL do to</p> <p>4 ensure that employees at the bank were following the</p> <p>5 policy?</p> <p>6 A I don't have that information.</p> <p>7 Q Do you know whether employees at</p> <p>8 BIL received training on how to use this policy?</p> <p>9 A I don't have that information.</p> <p>10 Q Do you know whether new employees</p> <p>11 when they joined the bank were made aware of this</p> <p>12 policy?</p> <p>13 A I know that employees within BIL</p> <p>14 have to follow several trainings in relation to</p> <p>15 different topics. I don't have the information, but</p> <p>16 it seems logical to me that persons treating -- or</p> <p>17 relationship managers treating with clients and</p> <p>18 handling these kinds of documents in relation to</p> <p>19 archiving, are being trained or at least have to</p> <p>20 familiarize themselves with these policies.</p> <p>21 Q You don't know for sure one way or</p> <p>22 the other?</p> <p>23 A Correct.</p> <p>24 Q Is there somebody that you could</p> <p>25 talk to within BIL who would know that?</p>	<p>171</p> <p>1 your questions. With that objection, you can</p> <p>2 answer.</p> <p>3 A I can only rephrase what</p> <p>4 Mr. Butler just told you, I can share my personal</p> <p>5 experience in relation to use of e-mails.</p> <p>6 BY MR. FLUGMAN:</p> <p>7 Q I will try to be more specific</p> <p>8 with my question. I am referring to the use of</p> <p>9 e-mails as it relates to topic 5, which relates to</p> <p>10 document retention, preservation and destruction</p> <p>11 and/or deletion policies in the normal course of</p> <p>12 business. My questions about e-mail are intended to</p> <p>13 be relative to that topic.</p> <p>14 I think you testified earlier today that</p> <p>15 you had seen these topics and you are prepared to</p> <p>16 testify about them, correct?</p> <p>17 A Yes.</p> <p>18 Q I am focusing on the 2000 to 2008</p> <p>19 time frame. Actually, I will extend it to 2010 to</p> <p>20 be comprehensive.</p> <p>21 MR. BUTLER: Only a ten-year time period?</p> <p>22</p> <p>23 BY MR. FLUGMAN:</p> <p>24 Q Only. Were there any size</p> <p>25 limitations on individual employees' e-mail accounts</p>
<p>170</p> <p>1 A Yes. The owner of the policy.</p> <p>2 Q Who was the owner of this policy</p> <p>3 we have been discussing in Exhibits 10 and 11.</p> <p>4 A Gilles Wagener, a person we</p> <p>5 referred to earlier.</p> <p>6 Q You did speak with Mr. Wagener in</p> <p>7 preparation for the deposition today, correct?</p> <p>8 A That is correct. Yes.</p> <p>9 Q Did BIL maintain any records or</p> <p>10 logs identifying when documents, either electronic</p> <p>11 or hard copy covered by this policy, were destroyed</p> <p>12 by the bank?</p> <p>13 A I don't have that information.</p> <p>14 Q Have you ever seen such a log or</p> <p>15 record?</p> <p>16 A No.</p> <p>17 Q I want to talk a little bit about</p> <p>18 the e-mail system at BIL. Is that something you are</p> <p>19 familiar with based on your preparation for today's</p> <p>20 deposition?</p> <p>21 MR. BUTLER: Let me just object. It is</p> <p>22 not -- the general topic of the e-mail system at BIL</p> <p>23 is not one of the topics. We didn't make him,</p> <p>24 Mr. Dewitte, the master of all details. But he uses</p> <p>25 the system himself and can probably answer some of</p>	<p>172</p> <p>1 at BIL during that time frame?</p> <p>2 MR. BUTLER: Objection to form. That is</p> <p>3 not a policy as such. But if you know the answer,</p> <p>4 you can respond. This witness is not prepared to</p> <p>5 testify about all the details of how the e-mail</p> <p>6 system worked more than ten years ago. If he knows</p> <p>7 the answer, he can respond.</p> <p>8 A Could you repeat the question,</p> <p>9 please?</p> <p>10 BY MR. FLUGMAN:</p> <p>11 Q Do you know whether there was any</p> <p>12 limitation on the size of an e-mail account for an</p> <p>13 employee at the bank?</p> <p>14 A If my memory is correct, at a</p> <p>15 certain point of time, yes. Because that was the</p> <p>16 reason why we have been asked -- and I'm just</p> <p>17 talking my personal experience. We have been asked</p> <p>18 to archive with one specific period in time as much</p> <p>19 e-mails as possible in order to be obliged to double</p> <p>20 the increase of the inbox at each time.</p> <p>21 Q Do you recall when that was?</p> <p>22 A It was probably the time period</p> <p>23 you are referring to.</p> <p>24 Q So as Mr. Butler pointed out, it's</p> <p>25 a relatively large time period. Do you have a more</p>

December 14, 2022

<p>173</p> <p>1 specific recollection of when that request was made?</p> <p>2 <b>A I am sorry, I don't have a more</b></p> <p>3 <b>specific recollection in time. It is already more</b></p> <p>4 <b>than ten years ago.</b></p> <p>5 Q Do you think it was when you were</p> <p>6 in your current position as head of wealth</p> <p>7 management legal?</p> <p>8 <b>A I prefer not guessing, so I prefer</b></p> <p>9 <b>saying that I don't have the information.</b></p> <p>10 Q But you think it was more than ten</p> <p>11 years ago?</p> <p>12 <b>A Yes.</b></p> <p>13 Q Could individual employees at BIL</p> <p>14 delete e-mails if they chose to?</p> <p>15 <b>A Yes.</b></p> <p>16 Q If an individual employee at BIL</p> <p>17 chose to delete an e-mail from his or her user</p> <p>18 account, was there a back-up copy or redundant copy</p> <p>19 saved somewhere on BIL's servers?</p> <p>20 <b>A I don't have any direct</b></p> <p>21 <b>confirmation for that. I can only make a deduction</b></p> <p>22 <b>with the information that Kyndryl has provided to us</b></p> <p>23 <b>a couple of weeks ago, but that would be a</b></p> <p>24 <b>deduction.</b></p> <p>25 Q So you don't know one way or the</p>	<p>175</p> <p>1 employee's e-mail account would be if that</p> <p>2 individual e-mail (sic) chose to delete that e-mail</p> <p>3 him or herself, correct?</p> <p>4 MR. BUTLER: Objection to form. You can</p> <p>5 answer. Also outside the scope. But you can</p> <p>6 answer, if you know.</p> <p>7 BY MR. FLUGMAN:</p> <p>8 Q Let me rephrase the question, just</p> <p>9 to be clear. The only way that an e-mail would not</p> <p>10 remain in a BIL employee's e-mail account would be</p> <p>11 if that individual employee chose to delete it, is</p> <p>12 that your understanding?</p> <p>13 <b>A Without being expert, that is my</b></p> <p>14 <b>understanding.</b></p> <p>15 Q Were there individuals within BIL</p> <p>16 who had the ability to permanently delete electronic</p> <p>17 information or electronically stored information</p> <p>18 from the servers at BIL?</p> <p>19 <b>A I'm sorry, could you repeat that?</b></p> <p>20 Q Sure. Were there individuals</p> <p>21 within BIL who had access to the servers where</p> <p>22 electronically stored information for employees at</p> <p>23 the bank was stored?</p> <p>24 <b>A People who had access to the</b></p> <p>25 <b>servers?</b></p>
<p>174</p> <p>1 other?</p> <p>2 <b>A Well, Kyndryl confirmed to us that</b></p> <p>3 <b>no -- in relation to the active mailboxes, no</b></p> <p>4 <b>back-up or archives are possible. But that would be</b></p> <p>5 <b>just assumptions. I prefer that is not being taken</b></p> <p>6 <b>into account as an answer.</b></p> <p>7 Q Are you aware of any mass purges</p> <p>8 of e-mails --</p> <p>9 <b>A Sorry, what?</b></p> <p>10 Q A large scale deletion of e-mails</p> <p>11 from individual users' accounts at the bank?</p> <p>12 <b>A To the best of my knowledge, no.</b></p> <p>13 Q If a user did not choose to delete</p> <p>14 an e-mail him or herself, was there any automatic</p> <p>15 deletion of e-mails for an individual account?</p> <p>16 <b>A Besides what Kyndryl has informed</b></p> <p>17 <b>us, I don't have any other information available.</b></p> <p>18 Q You don't know of any policy of</p> <p>19 automatic deletion of e-mails, correct?</p> <p>20 <b>A That is correct.</b></p> <p>21 Q For that relevant time period,</p> <p>22 2000 to 2010, correct?</p> <p>23 <b>A Yes, correct.</b></p> <p>24 Q So, just to be clear, the only way</p> <p>25 that an e-mail would not have remained in an</p>	<p>176</p> <p>1 Q Server. We talked this morning</p> <p>2 about Kyndryl at some point hosting e-mail servers</p> <p>3 for individual BIL employee. My question is, were</p> <p>4 there people during this time period, 2000 to 2010,</p> <p>5 within BIL who had access rights to the servers</p> <p>6 where information was stored at a higher level than</p> <p>7 individual e-mail accounts?</p> <p>8 MR. BUTLER: Object as being outside the</p> <p>9 scope. If you know, you can answer.</p> <p>10 <b>A I don't have that information, but</b></p> <p>11 <b>I presume so.</b></p> <p>12 <b>May I ask if you could re-read not this</b></p> <p>13 <b>question, but the previous one asked in relation to</b></p> <p>14 <b>the deletion of e-mails? If my understanding was</b></p> <p>15 <b>correct that the only way that an e-mail of an</b></p> <p>16 <b>individual could be deleted -- or disappeared was by</b></p> <p>17 <b>deleting it, was that your question -- previous</b></p> <p>18 <b>question?</b></p> <p>19 BY MR. FLUGMAN:</p> <p>20 Q Are you confused about the answer</p> <p>21 you gave or --</p> <p>22 <b>A No. The question as such. I'm</b></p> <p>23 <b>sorry for that.</b></p> <p>24 Q We can go back to that later. My</p> <p>25 question --</p>

December 14, 2022

<p>177</p> <p>1 MR. BUTLER: Just ask -- are you concerned 2 that your answer may not have been correct? 3 <b>A Yes.</b> 4 <b>BY MR. FLUGMAN:</b> 5 Q What is your concern? Why do you 6 think the answer you gave was incorrect? 7 <b>A I am not sure that I well</b> 8 <b>understood the question.</b> 9 Q So my question was, you testified 10 a couple questions ago that you are not aware of any 11 automatic deletion function at the bank for e-mails. 12 <b>A Yes.</b> 13 Q So, my question was, the way a 14 that -- sorry. 15 My question is, the only way that an 16 e-mail would be deleted from an individual user's 17 account would be if that user decided to delete the 18 e-mail, correct? 19 <b>A Yes. Then I agree with your</b> 20 <b>reasoning. But I think that answer is not correct.</b> 21 <b>Because I don't know. If an automatic deletion at a</b> 22 <b>certain point of time has been involved, I don't</b> 23 <b>have that information. I cannot say with certainty</b> 24 <b>to what extent if an e-mail in an inbox of an</b> 25 <b>employee does not exist anymore, if that was through</b></p>	<p>179</p> <p>1 in the past, in connection with this case, that 2 there was no automatic deletion at BIL, would you 3 have any reason to doubt that representation sitting 4 here today? 5 <b>A No.</b> 6 MR. BUTLER: I'll just object to that. I 7 think you are referring to my statement. I am not 8 sure I told you that. I am sure I don't know 9 whether there could have ever been an automatic 10 deletion of some kind at BIL, for the record. 11 MR. FLUGMAN: For the record, we do 12 understand that that was the representation you made 13 to us. But regardless, the witness' testimony -- 14 MR. BUTLER: Maybe at some point you can 15 take my deposition on that point, but not today. 16 <b>A We don't know. That's the bottom</b> 17 <b>line of the answer. We don't have the information.</b> 18 <b>BY MR. FLUGMAN:</b> 19 Q You know of no policy at the bank 20 that provides for automatic deletion, correct? 21 <b>A That is correct.</b> 22 Q I would like to talk now about 23 electronic files other than e-mails at the bank. 24 So, by that I mean PDF files, Word files, 25 PowerPoints, things like that. Do you understand</p>
<p>178</p> <p>1 <b>its proper hands or by a third party.</b> 2 Q Do you, sitting here today, have 3 knowledge of any policy at BIL that provides for 4 automatic deletion of e-mails? 5 <b>A No.</b> 6 Q Are you aware in your personal 7 experience at the bank of any of your e-mails being 8 automatically deleted? 9 <b>A No. But I have a quite organized</b> 10 <b>archiving of my proper e-mails.</b> 11 Q Are you aware of any time during 12 your tenure at the bank where e-mails were deleted 13 from your account without you deleting them? 14 <b>A No. But I know that at a certain</b> 15 <b>point of time in the past, certain actions needed to</b> 16 <b>be performed by employees in order to be able to</b> 17 <b>have access to certain e-mails at a certain point of</b> 18 <b>time.</b> 19 Q I appreciate it. That is not the 20 answer to my question. My question is, are you 21 aware of any instance in which e-mails were 22 automatically deleted from employees at BIL's e-mail 23 accounts? 24 <b>A I don't have that information.</b> 25 Q If counsel has represented to us</p>	<p>180</p> <p>1 what I am referring to generally? 2 <b>A I understand, yes.</b> 3 Q Were there any limitations during 4 the time period 2000 to 2010, on which individuals 5 at BIL could create electronic data -- documents? 6 <b>A To the best of my knowledge, not.</b> 7 (Pause.) 8 THE VIDEOGRAPHER: We are going off the 9 record. The time is 3:19 p.m. 10 (Off the record.) 11 (Exhibit 12 marked for identification.) 12 THE VIDEOGRAPHER: We are back on the 13 record. The time is 3:33 p.m. 14 BY MR. FLUGMAN: 15 Q Mr. Dewitte, the court reporter 16 has handed you a document that's been marked as 17 Exhibit 12. It is a document that was produced by 18 BIL in connection with this deposition. You will 19 see at the bottom it is stamped BIL 000530. It was 20 produced to us in English. It is entitled, 21 [REDACTED] 22 [REDACTED] 23 [REDACTED] Do you see that? 24 <b>A Yes.</b> 25 Q You will see that the policy</p>

December 14, 2022

181  
1 appears to be dated [REDACTED] do you  
2 agree?  
3 **A I agree.**  
4 **Q** Is this a document you are  
5 familiar with?  
6 **A Yes.**  
7 **Q** Is it one that you viewed in  
8 connection with preparation for today's deposition?  
9 **A Yes.**  
10 **Q** As an initial matter, would you  
11 agree with me that the client of BIL that is  
12 involved in the transactions at issue in this case  
13 is a private banking client?  
14 **A That is correct, yes.**  
15 **Q** Would you agree with me, then,  
16 tha [REDACTED]  
17 [REDACTED]  
18 [REDACTED]  
19 **A That is correct. Yes.**  
20 **Q** Was there a written policy at BIL  
21 regarding [REDACTED]  
22 [REDACTED]  
23 [REDACTED]  
24 **A Not that I am aware of.**  
25 **Q** Are you aware of BIL [REDACTED]

182  
1 [REDACTED] absent such a policy before  
2 [REDACTED]  
3 **A I don't have any information on**  
4 **that.**  
5 **Q** You just don't know one way or  
6 another?  
7 **A No, I don't know.**  
8 **Q** At least as of [REDACTED]  
9 however, BIL regularly [REDACTED] is  
10 [REDACTED]  
11 that correct?  
12 **A That is correct, yes.**  
13 **Q** If I could direct your attention  
14 to paragraph 1, section 1, which is entitled,  
15 [REDACTED]  
16 [REDACTED]  
17 [REDACTED]  
18 [REDACTED]  
19 Do you see that?  
20 **A I see that, yes.**  
21 **Q** Is it your understanding that BIL  
22 in fact [REDACTED]  
23 [REDACTED]  
24 [REDACTED]  
25 **A That information is correct to the**

183  
1 **extent that the appropriate device is being used,**  
2 **yes.**  
3 **Q** Can you explain what you mean by  
4 that?  
5 **A** [REDACTED]  
6 [REDACTED]  
7 [REDACTED]  
8 [REDACTED]  
9 [REDACTED]  
10 **Q** [REDACTED]  
11 [REDACTED]  
12 [REDACTED]  
13 [REDACTED]  
14 [REDACTED]  
15 **A** [REDACTED]  
16 [REDACTED]  
17 [REDACTED]  
18 **Q** The previous sentence I read  
19 states that [REDACTED]  
20 [REDACTED]  
21 **A That is what is mentioned, yes.**  
22 **Q** Do you have any reason to doubt  
23 that that is not the case?  
24 **A No. The reason why I am saying**  
25 **that is that** [REDACTED]

184  
1 [REDACTED] **Personally I have**  
2 **never used it. So, this is why I am making this**  
3 **side comment.**  
4 **Q** I understand. You're not a --  
5 correct me if I am wrong, but I believe your  
6 testimony earlier was that you [REDACTED]  
7 [REDACTED]  
8 [REDACTED] correct?  
9 **A That is correct. It happens on an**  
10 **occasional basis,** [REDACTED]  
11 [REDACTED] **and therefore we**  
12 **are not equipped to do so.**  
13 **Q** By contrast, a relationship  
14 manager, like Mr. Balducci or -- is it Ms. Reyter?  
15 **A Meyers.**  
16 **Q** Ms. Meyers -- they would be  
17 regularly communicating with customers of the bank,  
18 correct?  
19 **A Yes, correct.**  
20 **Q** So, under this policy, [REDACTED]  
21 [REDACTED]  
22 [REDACTED]  
23 [REDACTED]  
24 correct?  
25 **A** [REDACTED]



December 14, 2022

185  
1 [REDACTED]  
2 [REDACTED]  
3 Q Do you have any reason to doubt  
4 that Mr. Balducci [REDACTED]  
5 [REDACTED]  
6 A Well, all relationship managers,  
7 [REDACTED]  
8 [REDACTED]  
9 [REDACTED]  
10 [REDACTED]  
11 [REDACTED]  
12 [REDACTED]  
13 [REDACTED]  
14 [REDACTED]  
15 [REDACTED]  
16 Q I understand that. And I  
17 recognize that people [REDACTED]  
18 [REDACTED]  
19 [REDACTED]  
20 A I didn't check, but I think we can  
21 reasonably assume that is the case, yes.  
22 Q And just to be clear, the purpose  
23 of this policy which is stated in the introduction,  
24 [REDACTED]  
25 [REDACTED]

186  
1 [REDACTED] correct?  
2 A That is the intention, or the  
3 policy is designed to protect the interest of the  
4 bank, yes.  
5 Q That is the spirit of the policy,  
6 would you agree?  
7 A Exactly, yes.  
8 Q It says that in order to  
9 prevent -- I'm reading in the third sentence under  
10 introduction [REDACTED]  
11 [REDACTED]  
12 [REDACTED]  
13 Do you see that?  
14 A Yes.  
15 Q So you would agree with me that a  
16 [REDACTED]  
17 [REDACTED]  
18 [REDACTED]  
19 [REDACTED]  
20 A [REDACTED]  
21 [REDACTED]  
22 [REDACTED]  
23 [REDACTED]  
24 [REDACTED]  
25 [REDACTED]

187  
1 [REDACTED]  
2 Q Let's set that aside, [REDACTED]  
3 [REDACTED]  
4 [REDACTED]  
5 [REDACTED]  
6 [REDACTED]  
7 [REDACTED]  
8 [REDACTED]  
9 [REDACTED]  
10 correct?  
11 A Correct.  
12 Q Who at BIL was in charge of  
13 maintaining [REDACTED]  
14 [REDACTED]  
15 A Can you please define [REDACTED]  
16 [REDACTED] From an IT  
17 perspective?  
18 Q Let me ask it this way. [REDACTED]  
19 [REDACTED]  
20 [REDACTED]  
21 [REDACTED]  
22 [REDACTED]  
23 [REDACTED]  
24 A Okay. I think that -- I don't  
25 know who has the end responsibility of that. But I

188  
1 know that operational risk management within the  
2 bank, there is a team dedicated to operational risk  
3 management, [REDACTED]  
4 [REDACTED]  
5 Q Okay. And what distinction are  
6 you drawing between that person or persons and the  
7 end responsibilities?  
8 A [REDACTED]  
9 [REDACTED]  
10 [REDACTED]  
11 [REDACTED]  
12 [REDACTED]  
13 [REDACTED]  
14 [REDACTED]  
15 [REDACTED]  
16 Q [REDACTED]  
17 [REDACTED]  
18 A I am not sure whether it is  
19 mentioned in this policy, [REDACTED]  
20 [REDACTED]  
21 [REDACTED] is being mentioned.  
22 Q I think that was one of the  
23 policies that was produced this morning to us.  
24 A That is possible.  
25 Q That is a document that you looked

December 14, 2022

189

1 at in connection with preparation for your testimony  
2 today?  
3 **A Exactly.**  
4 **Q** Do you have any reason to believe  
5 that the retention period under this policy,  
6 Exhibit 12, was less than ten years?  
7 **A No.**  
8 **Q** Looking back on page 1 of the  
9 policy again, sir, the sentence after the one I read  
10 before [REDACTED]  
11 [REDACTED]  
12 [REDACTED]  
13 **A Yes.**  
14 **Q** Is it true, reviewing that  
15 paragraph and the one that follows it -- and if you  
16 need a moment, please go ahead. My question is, is  
17 it true, based on your understanding of the policy  
18 [REDACTED]  
19 [REDACTED]  
20 **A The way I read this sentence --**  
21 **this paragraph,** [REDACTED]  
22 [REDACTED]  
23 [REDACTED]  
24 **Q** And -- sorry.  
25 **A** [REDACTED]

190

1 [REDACTED]  
2 [REDACTED]  
3 [REDACTED]  
4 [REDACTED]  
5 **Q** In that instance, the BIL employee  
6 [REDACTED]  
7 [REDACTED]  
8 [REDACTED]  
9 correct?  
10 **A That is my understanding of the**  
11 **policy, yes, without having used personally the**  
12 **device.**  
13 **Q** That is what the policy says,  
14 though?  
15 **A Yes.**  
16 **Q** You would agree with me, [REDACTED]  
17 [REDACTED]  
18 [REDACTED]  
19 [REDACTED]  
20 [REDACTED]  
21 [REDACTED]  
22 **A Could you rephrase that, please,**  
23 **or repeat the question?**  
24 **Q** Sure. [REDACTED]  
25 [REDACTED]

191

1 [REDACTED]  
2 [REDACTED]  
3 [REDACTED]  
4 [REDACTED]  
5 [REDACTED]  
6 [REDACTED]  
7 [REDACTED]  
8 **A Absolutely, because it is both in**  
9 **the interest of the bank and of the relationship**  
10 **manager, yes.**  
11 **Q** On page 2 of the policy, if you  
12 see under section 2, where it says, [REDACTED]  
13 do you see that, sire?  
14 **A Yes.**  
15 **Q** It says, and I'm quoting,  
16 [REDACTED]  
17 [REDACTED]  
18 [REDACTED]  
19 [REDACTED]  
20 [REDACTED] o you see that?  
21 **A Yes.**  
22 **Q** So, would this be the group within  
23 BIL that was responsible for ensuring that the  
24 [REDACTED]  
25 **A I cannot confirm. I don't have**

192

1 **any information on that specific topic.**  
2 **Q** Who within the bank would?  
3 **A I presume the team -- operational**  
4 **risk management team who are** [REDACTED]  
5 [REDACTED]  
6 **Q** Sorry if you answered this before.  
7 Do you have any reason to believe that [REDACTED]  
8 [REDACTED]  
9 [REDACTED]  
10 **A I don't have that information.**  
11 **Q** Okay. [REDACTED]  
12 [REDACTED]  
13 [REDACTED]  
14 [REDACTED]  
15 **A To the extent that they are used**  
16 **with the appropriate device.**  
17 **Q** Yes. So [REDACTED]  
18 [REDACTED]  
19 [REDACTED]  
20 [REDACTED] pursuant to this policy,  
21 would you agree?  
22 **A Yes.**  
23 **Q** I believe you said earlier that  
24 BIL was aware of the Madoff fraud the day after it  
25 occurred in December of 2008, correct?

December 14, 2022

193

1 A That is correct, December 12th,  
2 yes.  
3 Q Are you aware of relationship  
4 managers and other investment professionals at BIL  
5 having conversations with customers after that  
6 announcement was made about investments in Madoff  
7 feeder funds such as at Fairfield?  
8 MR. BUTLER: I'll just object. It is  
9 outside of the scope. But you can answer, if you  
10 know.  
11 A [REDACTED]  
12 [REDACTED]  
13 [REDACTED]  
14 [REDACTED]  
15 [REDACTED]  
16 [REDACTED]  
17 [REDACTED]  
18 [REDACTED]  
19 [REDACTED]  
20 [REDACTED]  
21 [REDACTED]  
22 [REDACTED]  
23 [REDACTED]  
24 [REDACTED]  
25 [REDACTED].

194

1 [REDACTED]  
2 [REDACTED]  
3 [REDACTED]  
4 [REDACTED]  
5 [REDACTED]  
6 [REDACTED]  
7 [REDACTED]  
8 Q [REDACTED]  
9 [REDACTED]  
10 A [REDACTED]  
11 [REDACTED]  
12 [REDACTED]  
13 [REDACTED]  
14 [REDACTED]  
15 [REDACTED]  
16 [REDACTED]  
17 [REDACTED]  
18 Q [REDACTED]  
19 [REDACTED]  
20 A [REDACTED]  
21 [REDACTED]  
22 [REDACTED]  
23 [REDACTED]  
24 Q [REDACTED]  
25 A [REDACTED].

195

1 [REDACTED]  
2 [REDACTED]  
3 [REDACTED]  
4 [REDACTED]  
5 [REDACTED]  
6 [REDACTED]  
7 Q Sir, you realize that -- we talked  
8 earlier, I think, that Blue Star was invested into  
9 Fairfield, correct?  
10 A Blue Star was invested into  
11 Fairfield?  
12 Q I think we talked about that  
13 earlier today. Do you have knowledge of that?  
14 A No. The only knowledge I have was  
15 that -- well, Blue Star was invested in Madoff  
16 personally, but also in other funds completely not  
17 related.  
18 Q Part of the diligence you are  
19 talking about, at least with respect to Rafale and  
20 Blue Star involved diligencing Madoff, is that  
21 right?  
22 A I'm sorry?  
23 Q As part of the diligence you just  
24 referenced with respect to Rafale and Blue Star,  
25 that involved diligence on Madoff and BLMIS, is that

196

1 right?  
2 A In relation to these feeder funds,  
3 these two specific ones, yes.  
4 Q You knew, or BIL knew that moneys  
5 placed with those feeder funds would eventually be  
6 placed with Madoff, correct?  
7 MR. BUTLER: Objection to form. Outside  
8 the scope. You can answer if you know.  
9 A Yes.  
10 BY MR. FLUGMAN:  
11 Q BIL also knew that investments in  
12 Fairfield would eventually be placed with Madoff?  
13 A I don't have this information  
14 because BIL was not actively involved in the  
15 commercialization. BIL did not grant any loans to  
16 Fairfield and did not actively commercialize these  
17 funds. So there was no due diligence made of the  
18 feeder funds of Fairfield.  
19 Q BIL did make investments in  
20 Fairfield, though, on behalf of its underlying  
21 customers, you would agree?  
22 A That is correct, yes.  
23 Q Those investments extend beyond  
24 the ones at issue in this case, correct?  
25 A What do you mean these investments

December 14, 2022

<p>197</p> <p>1 extend beyond --</p> <p>2 Q There was more than the one</p> <p>3 subscription and redemption that's at issue in this</p> <p>4 case, BIL invested in Fairfield on behalf of other</p> <p>5 customers besides the one that's at issue in this</p> <p>6 case, correct?</p> <p>7 A That is correct.</p> <p>8 Q We looked at e-mails earlier where</p> <p>9 individuals from BIL [REDACTED]</p> <p>10 [REDACTED]</p> <p>11 [REDACTED] correct?</p> <p>12 A We saw one [REDACTED]</p> <p>13 [REDACTED] yes.</p> <p>14 Q So the answer to my question is</p> <p>15 yes?</p> <p>16 A Well, for me -- [REDACTED]</p> <p>17 [REDACTED]</p> <p>18 [REDACTED]</p> <p>19 [REDACTED]</p> <p>20 [REDACTED]</p> <p>21 [REDACTED]</p> <p>22 [REDACTED]</p> <p>23 Q Sir, I am not asking that</p> <p>24 question.</p> <p>25 A Sorry.</p>	<p>199</p> <p>1 So, typically Rafale and Blue Star were</p> <p>2 listed on that advisory -- on the list of stock of</p> <p>3 that advisory team.</p> <p>4 Q Do you recall when Rafale and Blue</p> <p>5 Star were added to that list at BIL?</p> <p>6 A For several years between 2000 --</p> <p>7 I don't have exact dates, but it would be a range of</p> <p>8 several years between 2004 or 2006, or 2003 and 2008</p> <p>9 even, I mean, up to the discovery of the Madoff</p> <p>10 fraud. Even if -- you might recall in 2008, the</p> <p>11 liquidity was less and less and less, so less people</p> <p>12 were investing, especially in hedge funds.</p> <p>13 Q Right. After 2008, did -- in your</p> <p>14 knowledge, did BIL ever experience any major IT</p> <p>15 system malfunctions?</p> <p>16 A Not -- to the best of my</p> <p>17 knowledge, not, even if now the bank is changing our</p> <p>18 core banking system, but no.</p> <p>19 Q You don't recall any instance</p> <p>20 where a huge amount of data was lost by the bank,</p> <p>21 you don't recall any instance where there was a</p> <p>22 large loss of data?</p> <p>23 A No. Like all banks or like all</p> <p>24 service providers, we have sometimes IT issues.</p> <p>25 Q But nothing -- no large scale loss</p>
<p>198</p> <p>1 Q My question is, we saw [REDACTED]</p> <p>2 [REDACTED]</p> <p>3 [REDACTED]</p> <p>4 correct?</p> <p>5 A That is correct, yes.</p> <p>6 Q I just want to clarify one point.</p> <p>7 When you say commercialization, what do you mean by</p> <p>8 that? I want to be precise to what you are</p> <p>9 referring to.</p> <p>10 A That means it is in the short list</p> <p>11 of the advisory teams within the bank.</p> <p>12 Q What does that mean?</p> <p>13 A It means that at the time -- we</p> <p>14 are talking before MiFIDs, the financial investments</p> <p>15 directive in Europe which was implemented after</p> <p>16 basically the subprimes which came over to Europe.</p> <p>17 What is important to know is that when a</p> <p>18 specific fund or an asset has been short-listed by</p> <p>19 the advisory teams, then the wealth management</p> <p>20 relationship managers, they have commercial</p> <p>21 objectives. The bank is not -- is supposed to make</p> <p>22 money. So, the bank selects, makes a due diligence</p> <p>23 on certain stock, listed or not, in which it thinks</p> <p>24 it can have a good return, which also can make some</p> <p>25 profit for the bank.</p>	<p>200</p> <p>1 of information at the bank after 2008, in your</p> <p>2 knowledge?</p> <p>3 A Not that I am aware of.</p> <p>4 Q Mr. Dewitte, we spoke a couple of</p> <p>5 times of BIL's learning of Madoff's fraud in -- I</p> <p>6 think you said December 12, 2008.</p> <p>7 A Yes.</p> <p>8 Q How did BIL learn of the fraud?</p> <p>9 Was it from news reports, or how did BIL first learn</p> <p>10 that Madoff had been arrested and that his whole</p> <p>11 scheme had collapsed?</p> <p>12 A It was from news reports.</p> <p>13 Q I take it that the bank has access</p> <p>14 to and uses major news outlets like Bloomberg and</p> <p>15 Reuters and New York Times, Wall Street Journal?</p> <p>16 A Yes. I am not sure to what</p> <p>17 extent. We have a subscription to Wall Street</p> <p>18 Journal, for instance, but I know that we have</p> <p>19 Bloomberg, we have CNN in our trading market,</p> <p>20 because we have our own trading market. From the</p> <p>21 moment that this news has been released, we were</p> <p>22 aware of that.</p> <p>23 Q You would agree with me it was a</p> <p>24 pretty big shock in the financial world when Madoff</p> <p>25 was discovered?</p>

December 14, 2022

<p style="text-align: right;">201</p> <p>1       A     <b>It was a huge shock, yes.</b>  2       Q     Catastrophic even?  3       A     <b>Exactly. The first numbers I have</b>  4 <b>in mind are 50 billion U.S. dollars, even really</b>  5 <b>before -- I mentioned before the second press</b>  6 <b>release of December 11 mentioned, if my memory is</b>  7 <b>correct, \$17 billion of assets under management at</b>  8 <b>the beginning of 2008.</b>  9       Q     At the time that BIL learned of  10 the Madoff collapse, or shortly thereafter, did BIL  11 contemplate that the feeder funds we have been  12 talking about that invested into Madoff would also  13 collapse?  14       MR. BUTLER: Objection to form. I don't  15 think I can let that question go in that form. It  16 goes to the mental impressions of people in the  17 bank, and of course Mr. Dewitte as a lawyer. In  18 terms of what was contemplated by BIL in terms of  19 legal exposure, I think that gets into privileged  20 question. So I instruct the witness not to answer.  21       MR. FLUGMAN: First of all, I'm not yet  22 asking about the substance or about legal exposure.  23 I am just asking whether the witness contemplated  24 that the feeder funds would also collapse. I think  25 that goes directly to when the bank had potential</p>	<p style="text-align: right;">203</p> <p>1     that it is not covered by the 30(b)(6) notice. I  2     think it is squarely covered by topic 2. Again, I  3     am asking for facts relative to when the bank was or  4     was not on notice of the claims in this case.  5       MR. BUTLER: That is it. You are asking  6     about the claims in this case by proxy. That goes  7     to whether the legal department anticipated the  8     claims in this case. And I think that is work  9     product, mental impressions of lawyers representing  10    banks concerning litigation, concerning this  11    specific litigation risk. If you limit it to --  12    that is my problem with the question.  13       MR. FLUGMAN: That is exactly the point of  14    the topic. The point of --  15       MR. BUTLER: The topic is -- which topic  16    are you talking --  17       MR. FLUGMAN: 2.  18       MR. BUTLER: Topic 2 is notice that BLMIS  19    has been placed into liquidation. He's answered  20    that question.  21       MR. FLUGMAN: And what actions if any you  22    took to preserve information regarding your or your  23    client's exposure --  24       MR. BUTLER: You haven't asked about what  25    steps -- well, he has testified about steps that</p>
<p style="text-align: right;">202</p> <p>1     notice of the claims that are at issue here, and I  2     think that is squarely within bounds in terms of the  3     topics of the deposition and is not protected by  4     privilege.  5       MR. BUTLER: Whether the bank contemplated  6     the collapse of the feeder funds -- I am not sure I  7     remember your question clearly, but I think if it is  8     limited to whether the bank -- people within the  9     bank contemplated the collapse of Fairfield, I think  10    that would be okay. If you want to ask it that way.  11    BY MR. FLUGMAN:  12       Q     Let me ask the question again. In  13    or around December of 2008, after Madoff's fraud was  14    exposed, did BIL contemplate that the Madoff feeder  15    funds like Fairfield would also collapse?  16       MR. BUTLER: I just have a problem with  17    the question still. This is outside the scope of  18    the 30(b)(6). So I think you can only ask  19    Mr. Dewitte that question in his personal capacity.  20       Again, it is going into the mental  21    impressions of lawyers at that time. I don't think  22    he can answer that question without getting involved  23    in privilege and/or work product. So I instruct the  24    witness not to answer.  25       MR. FLUGMAN: For the record, I disagree</p>	<p style="text-align: right;">204</p> <p>1     were taken to preserve information at that time.  2     You can ask him questions about that. But that is  3     different from asking what the bank, quote, end  4     quote, contemplated at that time. He has no way of  5     knowing what other people contemplated.  6       Anyway, the bank's contemplation is not  7     part of this. It is notice and steps to preserve.  8     He can testify in concrete terms about what steps  9     were taken to preserve documents at that time. I  10    think that is very different from what you are  11    asking now.  12       MR. FLUGMAN: Let's go off the record.  13       THE VIDEOGRAPHER: We are going off the  14    record. The time is 4:07 p.m.  15       (Off the record.)  16       THE VIDEOGRAPHER: We are back on the  17    record. The time is 4:20 p.m.  18    BY MR. FLUGMAN:  19       Q     Mr. Dewitte, I want to go back to  20    a question you had answered earlier today and just  21    make sure I understand it. I believe you testified  22    earlier that BIL learned about the Fairfield  23    litigation in August of 2010 when it received the  24    notice and summons, is that correct?  25       A     <b>That is correct, August 30th, yes.</b></p>

December 14, 2022

<p>205</p> <p>1 Q And that BIL did not contemplate 2 litigation regarding Fairfield before then? 3 A <b>That is correct, yes.</b> 4 MR. BUTLER: Let's just go slowly when we 5 are talking about BIL contemplated. He answered the 6 question. I have the same issue with these 7 contemplation questions. They necessarily implicate 8 the thoughts of the legal department of BIL. 9 In terms of notice, which comes from 10 outside, that is fair game; in terms of actions 11 taken by the bank, that is fair game. But I am 12 going to object to questions about contemplations of 13 lawyers within the bank. 14 (Exhibit 13 marked for identification.) 15 BY MR. FLUGMAN: 16 Q Before we get to this, I just want 17 to clarify, that last question I asked that 18 Mr. Butler had objected to, you had answered yes, 19 correct that BIL hadn't contemplated litigation 20 before August of 2010? 21 MR. BUTLER: I'm not going to let you 22 answer the question again. The record will speak 23 for itself. If he didn't answer the question, I 24 object and instruct the witness not to answer. But 25 I think he did. I think you have your record.</p>	<p>207</p> <p>1 of these funds of funds to be doing due diligence. 2 That is why they get paid." Do you see that? 3 A <b>Yes, sir.</b> 4 Q On the next page of the document, 5 page 2, do you see halfway down the page there's a 6 heading that says, "Due Diligence"? 7 A <b>Yes, sir.</b> 8 Q It says that -- the article says 9 that "They," referring to funds of funds, "are 10 supposed to conduct ongoing due diligence to avoid 11 frauds or other dangers such as managers straying 12 from their core investment strategy." 13 It goes on to say, "Fairfield Greenwich is 14 the biggest loser to emerge so far from the Madoff 15 scandal." And you will recall from earlier, 16 Fairfield Greenwich Group was the Fairfield funds 17 investment manager, do you remember that? 18 MR. BUTLER: You told him that. 19 BY MR. FLUGMAN: 20 Q Yes. You agree with me that we 21 discussed that earlier? 22 A <b>Yes.</b> 23 Q Do you generally agree that it is 24 incumbent upon investment managers to diligence 25 potential investments?</p>
<p>206</p> <p>1 A <b>May I add something?</b> 2 MR. BUTLER: No. Just answer his 3 questions. 4 BY MR. FLUGMAN: 5 Q Let's look at the exhibit in front 6 of you, sir. I will represent to you that this is a 7 news story from the Bloomberg news wire that we 8 pulled off recently from a publicly available 9 source. It is a document that -- a news article 10 that was published on December 15, 2008, entitled, 11 "Fairfield Sent Madoff \$7.3 Billion as Funds Took 12 Fees." Do you see that, sir? 13 A <b>Yes.</b> 14 Q Looking at the opening -- the 15 second paragraph, where it says the 7.3 billion 16 dollar Fairfield Sentry funds -- do you see that? 17 A <b>Yes.</b> 18 Q -- states that it invested solely 19 with Madoff, taking a cut of one percent of assets 20 and 20 percent of gains, do you see that, sir? 21 A <b>Yes, sir.</b> 22 Q Later, in the next paragraph, at 23 the end of that paragraph is a quote from somebody 24 named Brad Alford at Alpha Capital Management in 25 Atlanta, and he's quoted as saying, "It is the job</p>	<p>208</p> <p>1 MR. BUTLER: Objection. I'll instruct the 2 witness not to answer. You're asking for his 3 general agreement about things in a press release? 4 MR. FLUGMAN: What's the basis of your 5 instruction not to answer? 6 MR. BUTLER: He is a lawyer, so his ideas 7 about things relevant to this case are clearly 8 covered by work product. Things he knows are 9 generally informed by privileged communications. 10 You can't just ask him free-floating questions about 11 what he believes in this deposition. If it is tied 12 directly to a topic and he is prepared to testify as 13 a representative of the bank, that is a different 14 things. But this general question about what he 15 believes doesn't fall into that category. 16 MR. FLUGMAN: There is a distinction 17 between whether it relates to a topic and whether 18 it's privileged. Are you asserting that the 19 question I asked is calling for privileged 20 information? 21 MR. BUTLER: Let me hear the question 22 again. Yes, I was, but I could be wrong about that. 23 I've made mistakes before. So can I hear it again. 24 (Court reporter read back.) 25 MR. BUTLER: I stand by my instruction not</p>

December 14, 2022

<p style="text-align: right;">209</p> <p>1 to answer. You are really asking for Mr. Dewitte's 2 opinion as a lawyer for BIL on that topic. It is a 3 request for legal advice, not just a request about 4 legal advice. You're asking for his legal opinion, 5 and that is off limits. 6 BY MR. FLUGMAN: 7 Q At the time of this article, 8 December 15, 2008, did BIL contemplate potentially 9 bringing claims against Fairfield Greenwich Group? 10 MR. BUTLER: Hold on. Don't answer that. 11 Let me hear it again, please. 12 (Court reporter read back.) 13 MR. BUTLER: I stand by my instruction not 14 to answer. The contemplation of future claims is 15 clearly within the work product protection and 16 Mr. Dewitte would only know about the contemplation 17 of future claims from his privileged discussions 18 within the bank. 19 BY MR. FLUGMAN: 20 Q Next page of the article, under 21 the heading "Bank Fees." The final paragraph of 22 that section quotes a lawyer named Scott Berman at a 23 firm called Friedman Kaplan in New York, and reports 24 that Mr. Berman had gotten numerous calls from 25 investors who had money with feeder funds such as</p>	<p style="text-align: right;">211</p> <p>1 that time relating to Madoff exposure? 2 A <b>Later on, yes.</b> 3 Q When? 4 A <b>It was afterwards. It was -- I</b> 5 <b>don't have the specific time frame in mind. It was</b> 6 <b>later on.</b> 7 Q Was it in early 2009? 8 A <b>It was even later on, it was in</b> 9 <b>September 2010 that we were in close contact.</b> 10 Q Sorry, is your testimony that the 11 first time BIL contacted or somebody acting on 12 behalf of BIL contacted U.S. counsel was 13 September 2010? 14 A <b>Yes.</b> 15 Q With respect to -- to be clear, I 16 am not talking solely about this case, I'm talking 17 about BIL's potential exposure to Madoff generally. 18 Is it your testimony that the first time BIL or 19 somebody on BIL's behalf contacted U.S. counsel to 20 advise on the question of BIL's potential exposure 21 to Madoff was September 2010? 22 A <b>In December 16th already BIL</b> 23 <b>contacted Clifford Chance Luxembourg. It is only</b> 24 <b>afterwards that it was because of Clifford Chance</b> 25 <b>Luxembourg that Clifford Chance U.S. was contacted.</b></p>
<p style="text-align: right;">210</p> <p>1 Fairfield Greenwich and Treemont, and that he plans 2 to investigate whether these funds failed to do due 3 diligence or if they invested in ways that were 4 contrary to what they told investors. That is a 5 quote from the article. 6 At the time of this article did BIL 7 contact Mr. Berman regarding such potential claims. 8 MR. BUTLER: Object that that is outside 9 the scope of the topic. But if you know, you can 10 answer the question. 11 A <b>So around December 15 did BIL</b> 12 <b>contact --</b> 13 Q A lawyer named Scott Berman. 14 A <b>Not that I am aware of, no.</b> 15 Q In or around December 15, 2008, 16 did BIL contact any U.S. lawyer with respect to 17 Madoff exposure? 18 A <b>Not directly, no.</b> 19 Q Did BIL contact any U.S. lawyer 20 indirectly with respect to potential Madoff 21 exposure? 22 A <b>BIL contacted Luxembourg counsel</b> 23 <b>after it discovered the Madoff fraud.</b> 24 Q Do you understand that Luxembourg 25 counsel contacted U.S. counsel on behalf of BIL at</p>	<p style="text-align: right;">212</p> <p>1 <b>But it was not straight afterwards. It was a while</b> 2 <b>afterwards.</b> 3 Q So I understand, your testimony is 4 that you are not aware of Clifford Chance United 5 States being consulted by BIL before September of 6 2010 in connection with Madoff generally? 7 A <b>According to my review, it was --</b> 8 <b>which is written on my notes here, September 2010,</b> 9 <b>yes.</b> 10 Q What -- whom did you consult in 11 order to learn that fact for today's deposition? 12 A <b>I reviewed internal files of the</b> 13 <b>legal department.</b> 14 Q Do you know whether Clifford 15 Chance Luxembourg reached out to Clifford Chance in 16 the United States with respect to potential exposure 17 by BIL to the Madoff scandal one way or the other? 18 A <b>Yes, there has been some</b> 19 <b>communication on that, yes.</b> 20 Q When was the first communication? 21 A <b>I don't have the exact date in</b> 22 <b>mind.</b> 23 Q Was it in December of 2008? 24 A <b>It was later on.</b> 25 Q Was it in the first half of 2009?</p>

December 14, 2022

<p style="text-align: right;">213</p> <p>1       <b>A     It was a couple of months later.</b></p> <p>2       Q     Couple months later than what?</p> <p>3       <b>A     Than December 2008.</b></p> <p>4       Q     Sometime in the first quarter of</p> <p>5 2009?</p> <p>6       <b>A     That is possible, yes.</b></p> <p>7       MR. BUTLER: Can we take a break? I need</p> <p>8 to check the information. I want to make sure the</p> <p>9 correct information is conveyed. This is one of the</p> <p>10 topics on the 30(b)(6) notice. I want to make sure</p> <p>11 the witness has the information correct.</p> <p>12       THE VIDEOGRAPHER: We are going off the</p> <p>13 record. The time is 4:33 p.m.</p> <p>14       (Off the record.)</p> <p>15       THE VIDEOGRAPHER: We are back on the</p> <p>16 record. Time is 4:38 p.m.</p> <p>17       MR. BUTLER: Because this is a 30(b)(6)</p> <p>18 witness and this is testimony on behalf of the bank,</p> <p>19 I have some obligation to make sure the information</p> <p>20 provided is correct, particularly as it relates to</p> <p>21 my law firm and my involvement in the case. So</p> <p>22 Mr. Dewitte would like to clarify a point from the</p> <p>23 previous question.</p> <p>24       <b>A     So, the bank had direct</b></p> <p>25 <b>communication with Clifford Chance Luxembourg from</b></p>	<p style="text-align: right;">215</p> <p>1 "The Madoff case could reel in former investors,"</p> <p>2 closed quote.</p> <p>3       In paragraph 2, the second sentence reads,</p> <p>4 quote, "Under federal law, the trustee in the case,"</p> <p>5 which is relating to a different bankruptcy</p> <p>6 hearing -- a bankruptcy case, rather, "can sue</p> <p>7 former investors to force them to return their</p> <p>8 profits in principal, a process known as a</p> <p>9 clawback."</p> <p>10       The article goes on to compare that to the</p> <p>11 Madoff case and discusses how the trustee in the</p> <p>12 Madoff case might similarly assert clawbacks against</p> <p>13 former investors. You can review the article, I can</p> <p>14 represent to you that is what it says.</p> <p>15       My question is simple, on or about the</p> <p>16 date of this article, which was December 31st, 2008,</p> <p>17 did BIL have concerns that BLMIS would sue BIL in a</p> <p>18 clawback action for return of redemptions made from</p> <p>19 BLMIS?</p> <p>20       MR. BUTLER: My objection is simple as</p> <p>21 well. I instruct the witness not to answer.</p> <p>22       (Exhibit 15 marked for identification.)</p> <p>23 BY MR. FLUGMAN:</p> <p>24       Q     This is an e-mail I am showing you</p> <p>25 marked as Exhibit 15. It was an e-mail obtained by</p>
<p style="text-align: right;">214</p> <p>1 <b>December 16th onwards. BIL had direct communication</b></p> <p>2 <b>with Clifford Chance Newark, and Jeff Butler in</b></p> <p>3 <b>particular, from October 2010 onwards.</b></p> <p>4       <b>It could be that in the meantime in 2009</b></p> <p>5 <b>there had been communication between Clifford Chance</b></p> <p>6 <b>Luxembourg and Clifford Chance New York.</b></p> <p>7       Q     When you said December 16th</p> <p>8 onwards, you meant December 16, 2008?</p> <p>9       <b>A     Yes.</b></p> <p>10       Q     Just for clarification.</p> <p>11       Sitting here today, your understanding of</p> <p>12 the first time that BIL communicated with Clifford</p> <p>13 Chance U.S. was October of 2010?</p> <p>14       <b>A     That is correct, yes.</b></p> <p>15       (Exhibit 14 marked for identification.)</p> <p>16 BY MR. FLUGMAN:</p> <p>17       Q     Mr. Dewitte, the court reporter</p> <p>18 has handed you Exhibit 14, which is a Bloomberg</p> <p>19 article that we printed from the internet a couple</p> <p>20 of weeks ago, dated December 31st, 2008. And you</p> <p>21 testified earlier I think that the bank has access</p> <p>22 to Bloomberg, correct?</p> <p>23       <b>A     Correct.</b></p> <p>24       Q     The title of this article, which</p> <p>25 again, was published at the end of 2008, is, quote,</p>	<p style="text-align: right;">216</p> <p>1 the liquidators from another source, the Bates</p> <p>2 number at the bottom of the page confirms that.</p> <p>3 This appears to be an e-mail between [REDACTED]</p> <p>4 [REDACTED]</p> <p>5 [REDACTED]</p> <p>6 [REDACTED]</p> <p>7 [REDACTED]</p> <p>8 [REDACTED]</p> <p>9 [REDACTED]</p> <p>10 [REDACTED]</p> <p>11 [REDACTED]</p> <p>12 [REDACTED]</p> <p>13 [REDACTED]</p> <p>14       <b>A     Yes.</b></p> <p>15       Q     You will see that in the second</p> <p>16 sentence of that opening paragraph on the bottom</p> <p>17 e-mail, it says, quote [REDACTED]</p> <p>18 [REDACTED] Do you see that?</p> <p>19       <b>A     Yes.</b></p> <p>20       Q     Would you agree with me that at</p> <p>21 least as of [REDACTED] 2009, BIL was aware that</p> <p>22 Fairfield Sentry had suspended its NAV?</p> <p>23       <b>A     Yes.</b></p> <p>24       Q     Again, in [REDACTED] 2009, [REDACTED]</p> <p>25 [REDACTED] did BIL contemplate any</p>



December 14, 2022

<p style="text-align: right;">217</p> <p>1 litigation involving Fairfield Greenwich Group or 2 the Fairfield funds? 3 MR. BUTLER: Objection. I can make this 4 objection all day if I need to, but I instruct the 5 witness not to answer on contemplated specific 6 litigation exposure in this case. 7 (Exhibit 16 marked for identification.) 8 BY MR. FLUGMAN: 9 Q This is Exhibit 16, an article 10 printed from the New York Times recently, but that 11 appeared in the New York Times on July 21st, 2009. 12 It is entitled -- the headline, "Judge Approves 13 Liquidation of Madoff Feeder Funds." Do you see 14 that, sir? 15 A Yes, sir. 16 Q The opening line in the article 17 states, quote, "A judge in BVI has approved the 18 liquidation of the Fairfield Sentry funds which were 19 the largest conduits for cash flowing into the hands 20 of Bernard L. Madoff and his global Ponzi scheme." 21 Do you see that? 22 A Yes, sir. 23 Q Was BIL aware in July of 2009 that 24 Fairfield Sentry had been placed into liquidation? 25 MR. BUTLER: Object to form. Outside the</p>	<p style="text-align: right;">219</p> <p>1 Jeff, and the interview we made with Michelle Albert 2 we referred to earlier today; and for your 3 information I was also earlier referring to a task 4 force that was set up. One of the objectives of 5 that task force was that an inspection team was 6 mandated to collect physical documents and to store 7 them in a safe place, locked physically by the 8 inspection team. 9 Q And I think you testified earlier 10 that no collection of documents relating to 11 Fairfield took place until August of 2010, is that 12 right? 13 A That is correct. If I can 14 continue, so the collection of documents we are 15 talking over here, so after the collapse of Madoff, 16 after December 2008, was in relation to the feeder 17 funds Rafale Partners, Inc. and Blue Star funds. 18 Q I understand. The four you 19 discussed earlier? 20 A Exactly. That was the attention 21 point of the bank, because we granted credit and 22 loans to these feeder funds and we had to handle a 23 lot of client complaints. 24 Q I understand. 25 MR. BUTLER: Just a second. The witness</p>
<p style="text-align: right;">218</p> <p>1 scope. But you can answer if you know. 2 A I don't have that information 3 available, if at that specific moment, July 2009, 4 BIL was aware about that fact. 5 BY MR. FLUGMAN: 6 Q You will agree with me that fact 7 of the liquidation of Fairfield Sentry was publicly 8 reported at that time? 9 A Yes. 10 Q And that certainly BIL had access 11 to the New York Times? 12 A Printed online, so, yes. 13 Q I am aware that BIL issued a 14 litigation hold notice that we will talk about in a 15 moment in November of 2010. I am focusing my 16 question on the period before that time. 17 So, in the period between when BIL learned 18 of the BLMIS collapse and the liquidation of 19 Fairfield, from that point in time up until the 20 issuance of the litigation hold in December of 2010, 21 did BIL take any steps to segregate or preserve 22 information related to its investments with BLMIS or 23 Fairfield? 24 A Well, after review of internal 25 files of the legal department, discussions with</p>	<p style="text-align: right;">220</p> <p>1 is answering your question. Please don't interrupt 2 him. You are asking him to retestify about things 3 he testified previously. Now he is answering your 4 question. 5 MR. FLUGMAN: My question was -- 6 MR. BUTLER: Hold on. Let him finish his 7 answer. 8 MR. FLUGMAN: My question was just to 9 confirm that no collection of documents related to 10 Fairfield took place until August of 2010. That was 11 my question. That is a yes-or-no question. 12 MR. BUTLER: You should have clarified it 13 was a yes-or-no question when you asked it. Why 14 don't you ask him a yes-or-no question. 15 BY MR. FLUGMAN: 16 Q Sir, do I understand your 17 testimony correctly that no documents relating to 18 the Fairfield funds were collected at BIL before 19 August of 2010? 20 A Can I say more than yes or no? 21 Q Can you answer the question yes or 22 no first? 23 A Well, no specific documents 24 were -- can you repeat the question, please. 25 Q Sure. I thought that this was</p>

December 14, 2022

<p style="text-align: right;">221</p> <p>1 clear before, perhaps it was not. I understood your 2 earlier testimony -- 3 MR. BUTLER: We don't need any commentary. 4 BY MR. FLUGMAN: 5 Q I understand from your earlier 6 testimony that the first time the bank collected 7 information relating to the Fairfield funds was 8 after the bank received the summons and notice in 9 August of 2010, is that correct? 10 A <b>Correct, we took copies of the</b> 11 <b>available information which was previously already</b> 12 <b>collected in the ordinary course of business. That</b> 13 <b>is what I also wanted to make.</b> 14 Q I understand. When BIL collected 15 the information relating to the four feeder funds 16 that BIL commercialized in early -- 17 A <b>Two of them.</b> 18 Q Only two of them, Rafale and Blue 19 Star? 20 A <b>Exactly. We granted credits to</b> 21 <b>four, but only two of the four we commercialized.</b> 22 Q But did you collect documents in 23 early 2009 with respect to all four or just the two 24 that BIL commercialized? 25 A <b>They were the four main -- the</b></p>	<p style="text-align: right;">223</p> <p>1 anybody, either in that department or elsewhere in 2 BIL, monitor litigation that the Madoff trustee was 3 filing in New York? 4 A <b>Not that I am aware of, no.</b> 5 Q After the BLMIS collapse in 6 December of 2008, did BIL consider suspending or 7 changing any of its document retention policies? 8 MR. BUTLER: Hold on a second. Let me 9 think about that one. I think it is okay. Let me 10 hear the question again. 11 (Court reporter read back.) 12 A <b>Not that I am aware of, no.</b> 13 BY MR. FLUGMAN: 14 Q This is again a yes or no, I'm not 15 asking for the substance of any conversations. Did 16 any attorney advise BIL on document collection or 17 preservation in or around December 2008 after the 18 Madoff collapse became public? 19 MR. BUTLER: I don't think I can allow 20 that. It is going into substance of requests 21 specifically of advice. Asking when law firms were 22 retained is not privileged and fairly within the 23 scope. But asking about when particular advice may 24 have been given I think goes a step too far. I 25 instruct the witness with not to answer as phrased.</p>
<p style="text-align: right;">222</p> <p>1 <b>four feeder funds.</b> 2 Q Did the collection of documents 3 with respect to those four feeder funds in early 4 2009 include the collection of any electronic 5 documents? 6 A <b>No.</b> 7 Q Does that include e-mails as well, 8 BIL did not collect any e-mails from relevant 9 custodians related to those four feeder funds at 10 that time? 11 A <b>That is correct. It was not in</b> 12 <b>the scope of -- no. Sorry.</b> 13 Q After BIL learned about the BLMIS 14 collapse, did BIL assign any employees the task of 15 monitoring news about the Madoff investigation and 16 prosecution? 17 MR. BUTLER: Objection. Outside the 18 scope. But he can answer. 19 A <b>BIL and Dexia at the time had its</b> 20 <b>own press department, can you say that? It is a</b> 21 <b>communication department. They were following up</b> 22 <b>closely about the Madoff case in general or other</b> 23 <b>information, yes.</b> 24 BY MR. FLUGMAN: 25 Q As part of that attention, did</p>	<p style="text-align: right;">224</p> <p>1 MR. FLUGMAN: For the record I disagree. 2 I think that information is the kind of information 3 that would be routinely included in a privilege log 4 at that level of generality. 5 MR. BUTLER: I hear you, it is pretty 6 general. I think it is pretty close. I think it is 7 close but I think it is over the line. I think I 8 will allow a question about did -- when the bank 9 might have consulted lawyers on the general topic of 10 document preservation. Maybe I would allow it in 11 that form. 12 BY MR. FLUGMAN: 13 Q Let's start there. Mr. Dewitte, 14 when did BIL first consult lawyers with respect to 15 document preservation and collection obligations as 16 it relates to Madoff and BLMIS? 17 MR. BUTLER: That's fine. You can answer 18 the question, if you know. 19 A <b>I don't have any specific memory</b> 20 <b>about this topic.</b> 21 BY MR. FLUGMAN: 22 Q Do you know if that occurred in 23 2008 after December 12th? 24 A <b>Well, after the Madoff collapse,</b> 25 <b>it was the intention or the purpose of the bank to</b></p>

December 14, 2022

<p style="text-align: right;">225</p> <p>1 <b>protect documents, regardless of any external advice</b> 2 <b>we received at the time.</b> 3 Q Perhaps let me ask it this way. 4 You testified that the bank collected certain 5 information with respect to the four feeder funds 6 sometime in early 2009, is that correct? 7 A Yes. 8 Q So prior to doing that document 9 collection, had BIL consulted with lawyers regarding 10 document preservation and collection obligations? 11 A <b>Not that I am aware of, no.</b> 12 Q Do you know whether BIL was 13 already -- let me rephrase. 14 Was BIL familiar with U.S. litigation 15 prior to December of 2008? 16 A <b>Not to the best of my knowledge,</b> 17 <b>no.</b> 18 Q Do you know whether BIL had been a 19 party to any U.S. litigation prior to December of 20 2008? 21 A <b>Again, to the best of my</b> 22 <b>knowledge, no.</b> 23 Q Was any electronically stored 24 information relating to BIL's Madoff exposure 25 collected at any point in 2009?</p>	<p style="text-align: right;">227</p> <p>1 BIL actually collect any electronically stored 2 information, including e-mails from anyone at the 3 bank, as part of an effort to preserve documents 4 related to Madoff, BLMIS or feeder funds that 5 invested in Madoff? 6 A <b>Yes, there has been an effort to</b> 7 <b>collect information. For instance, the notice to</b> 8 <b>shareholders, which has been issued by the different</b> 9 <b>feeder funds, these have been collected.</b> 10 Q Were those collected in electronic 11 form in 2009? 12 A <b>Some of these are available in</b> 13 <b>electronic form, yes.</b> 14 Q Are you aware of any individuals 15 at BIL whose ESI, including e-mails, were available 16 for collection in 2009? 17 A <b>In 2009 we have asked different</b> 18 <b>people working on the Madoff file, in relation to</b> 19 <b>feeder funds I mentioned previously, to provide</b> 20 <b>information they had to the legal departments.</b> 21 Q Sorry, I don't mean to ask my 22 question again. I'm just not sure I got an answer 23 to the question. Are you aware of any ESI being 24 collected in 2009 from anyone as it relates to 25 Madoff, BLMIS or any feeder fund that invested in</p>
<p style="text-align: right;">226</p> <p>1 A <b>Sorry, could you repeat that</b> 2 <b>again.</b> 3 Q Sure. Was any electronically 4 stored information relating to BIL's Madoff exposure 5 collected at any point in 2009? 6 A <b>You are asking if any information</b> 7 <b>in relation to BLMIS has been stored in 2009?</b> 8 Q Let me ask it a different way. 9 A <b>Sorry for that.</b> 10 Q That's okay. In 2009, did BIL 11 collect any e-mails or other electronically stored 12 information from anyone in the bank relating to 13 Madoff, BLMIS or feeder funds that invested with 14 Madoff? 15 A <b>Well, electronic information or</b> 16 <b>information in general?</b> 17 Q I'm focused specifically on 18 electronic information, but broadly. So e-mails or 19 other forms of electronic information. 20 A <b>Well, electronic information --</b> 21 <b>personally I have stored electronic information</b> 22 <b>available -- I mean exchange of e-mails between</b> 23 <b>employees of the bank following the set-up of this</b> 24 <b>Madoff task force, yes.</b> 25 Q So my question, though, was, did</p>	<p style="text-align: right;">228</p> <p>1 Madoff? 2 A <b>Yes, there has been ESI collected.</b> 3 Q What ESI was collected? 4 A <b>For instance, the -- in 2009 the</b> 5 <b>perspective of the different feeder funds, or as I</b> 6 <b>told you before, the general information notices to</b> 7 <b>shareholders, so this kind of information that has</b> 8 <b>been collected.</b> 9 Q Am I correct in understanding that 10 that information relates to the four feeder funds we 11 have been discussing here today? 12 A <b>Yes.</b> 13 Q I am also correct in understanding 14 that there was no collection of ESI or 15 electronically stored information with respect to 16 Fairfield during 2009? 17 A <b>That is correct, yes.</b> 18 Q That is also true for 2010, 19 correct? 20 A <b>That is correct, yes.</b> 21 Q I would like to focus specifically 22 on Fairfield. When did BIL first become aware that 23 the Fairfield liquidators were filing lawsuits to 24 recover moneys that had been paid out to investors 25 in the Fairfield funds?</p>

December 14, 2022

<p>229</p> <p>1 A So you are referring to the first 2 topic of this examination? 3 Q Well, a little bit broader than 4 that. It relates to 1 and 3, I believe. What I am 5 asking is, I think you testified that you first 6 received notice of this litigation in August of 2010 7 when you received the summons and complaint, do I 8 understand that correctly? 9 A That is correct, yes. 10 MR. BUTLER: Just to clarify, summons with 11 notice, as you know is quite a different thing from 12 a complaint. 13 MR. FLUGMAN: I think I was clear in my 14 question. 15 MR. BUTLER: You said summons and 16 complaint. The complaint wasn't received until much 17 later. 18 BY MR. FLUGMAN: 19 Q I apologize. 20 My question now is, before that time, did 21 BIL know that the Fairfield liquidators were 22 initiating lawsuits in the United States against 23 shareholders in those funds? 24 MR. BUTLER: Object. It is outside the 25 scope. But you can answer the question.</p>	<p>231</p> <p>1 making process as to the issuance of that litigation 2 hold notice? 3 A Personally, I was not involved. 4 Q Who at the bank was? 5 A The former head of legal, 6 Jean-Marc van Oldeneel, and one of my former 7 colleagues working in my team, Fabrice Dispo[sic]. 8 Q Anyone else you can recall being 9 involved in the decision? 10 A Bernard Mommens, the secretary 11 general and general counsel. 12 Q Do you recall whether outside 13 counsel was involved in the decision to issue the 14 litigation hold notice? 15 A Jeff Butler, our outside counsel, 16 was involved. 17 (Exhibit 17 and 18 marked for identification.) 18 BY MR. FLUGMAN: 19 Q The court reporter is going to 20 hand you two exhibits, 17 and 18, again a French and 21 English version of a document that was produced by 22 BIL in the original French that we translated using 23 the same service, and a certificate of the accuracy 24 of the translation is appended to the end of the 25 English language version.</p>
<p>230</p> <p>1 A No. It was not on the radar of 2 BIL at the time. 3 BY MR. FLUGMAN: 4 Q Sir, I would like to focus now on 5 the hold notice that was sent out on November 25th, 6 2010. 7 One question before we get there with 8 respect to the complaint in the action. When did 9 BIL first receive a copy of the complaint in this 10 action? 11 MR. BUTLER: Objection. Outside the 12 scope. But you can answer, if you know. 13 A So, the summons with notice, we 14 received electronical information on August 30th, we 15 received original one on September 22nd, if my 16 memory is correct, and then the official complaint 17 followed later. Yes. 18 BY MR. FLUGMAN: 19 Q Okay. Going back to the 20 litigation hold notice. Sir, were you aware on or 21 about November 25, 2010 that this -- that a 22 litigation hold notice was sent out to employees at 23 BIL with respect to the Fairfield litigation? 24 A I was aware of that, yes. 25 Q Were you involved in the decision</p>	<p>232</p> <p>1 MR. BUTLER: Can you tell me which is 2 which. Exhibit 16 is English or French? 3 MR. FLUGMAN: Exhibit 17 is the French, 4 Exhibit 18 is the English. 5 BY MR. FLUGMAN: 6 Q Like we did earlier, with respect 7 to the policy, please feel free to keep both copies 8 in front of you. Refer to whichever version you 9 like. I will work off the English version. If 10 there is any discrepancy in your mind in the 11 translation, please point that out to me. If you 12 don't, I will assume that the translation is 13 accurate. 14 A Thank you. 15 Q First, do you recognize this 16 document as an e-mail [REDACTED] 17 [REDACTED] 18 [REDACTED] 19 [REDACTED] 20 A Yes, sir. 21 Q [REDACTED] 22 [REDACTED] 23 [REDACTED] 24 [REDACTED] 25 [REDACTED]</p>

December 14, 2022

233

1 A [REDACTED]  
2 [REDACTED]  
3 Q [REDACTED]  
4 A [REDACTED]  
5 Q That makes sense. It says that  
6 the e-mail was sent from [REDACTED]  
7 [REDACTED]  
8 [REDACTED]  
9 [REDACTED]  
10 [REDACTED]  
11 A That is my assumption. Indeed  
12 they were not copying the e-mail, so I have asked  
13 the current assistant of Bernard Mommens to provide  
14 me with the addresses of this e-mail.  
15 Q When did you ask for those  
16 addresses to be provided to you?  
17 A Quite recently. [REDACTED]  
18 [REDACTED]  
19 Q [REDACTED] Did bank -- did the  
20 bank have the original electronic version of this  
21 [REDACTED] e-mail with [REDACTED]  
22 [REDACTED] in its possession when you inquired  
23 about the hold recently?  
24 A I have it in my records, yes.  
25 Electronically available, yes.

234

1 Q You said you had that in your own  
2 personal e-mail records?  
3 A In the archiving system of our  
4 legal team, yes.  
5 Q I am correct in understanding that  
6 this original [REDACTED] e-mail attached [REDACTED]  
7 [REDACTED] correct?  
8 A That is correct, yes.  
9 Q Was this e-mail the only e-mail  
10 that sent out that [REDACTED] to anyone  
11 at BIL?  
12 A Yes, that is correct.  
13 Q Was there ever a subsequent  
14 [REDACTED]  
15 [REDACTED]  
16 A No.  
17 Q Was there ever, [REDACTED]  
18 [REDACTED]  
19 [REDACTED]  
20 [REDACTED]  
21 [REDACTED]  
22 A To the best of my knowledge, no.  
23 Q Are you aware of [REDACTED]  
24 [REDACTED]  
25 [REDACTED]

235

1 A Let me rephrase that. It is  
2 possible that --  
3 Q Your last question?  
4 A What I just told you.  
5 Q Maybe I will ask the question  
6 again. My question was, was there [REDACTED]  
7 [REDACTED]  
8 [REDACTED]  
9 [REDACTED]  
10 [REDACTED]  
11 A I am just thinking -- mainly not,  
12 but I am thinking about not in relation to the  
13 decision, but in relation to the production of  
14 documents in June or in -- of this year when I was  
15 reaching out to certain of -- to the bank, and I  
16 referred to them. [REDACTED]  
17 [REDACTED]  
18 [REDACTED]  
19 [REDACTED]  
20 [REDACTED]  
21 Q I understand. I appreciate that.  
22 Aside from that potential e-mail you may  
23 have sent [REDACTED]  
24 [REDACTED]  
25 [REDACTED]

236

1 [REDACTED]  
2 A Correct, yes.  
3 Q I want focus on the language in  
4 [REDACTED] e-mail, if I could. I'm reading at the  
5 bottom of 535, where [REDACTED]  
6 [REDACTED]  
7 [REDACTED]  
8 [REDACTED]  
9 A This one?  
10 Q Yes.  
11 A You are referring to the English  
12 version?  
13 Q I am. You can feel free to look  
14 at either.  
15 MR. BUTLER: The English version I have,  
16 the Bates numbers don't correspond to the French  
17 version that we produced, BIL 537. You can't see  
18 that.  
19 MR. FLUGMAN: I think you are right.  
20 MR. BUTLER: I just want to state for the  
21 record there's some ambiguity between the French and  
22 the translation in terms of Bates numbers.  
23 MR. FLUGMAN: To be clear, I think we're  
24 all on the same page, but I am referring to  
25 [REDACTED]

December 14, 2022

<p>237</p> <p>1 [REDACTED]</p> <p>2 BY MR. FLUGMAN:</p> <p>3 Q [REDACTED]</p> <p>4 [REDACTED]</p> <p>5 [REDACTED]</p> <p>6 [REDACTED]</p> <p>7 [REDACTED]</p> <p>8 [REDACTED]</p> <p>9 A Yes.</p> <p>10 Q So it is clear that this e-mail is</p> <p>11 [REDACTED]</p> <p>12 A Yes.</p> <p>13 Q If we go to the next page, which</p> <p>14 is the back of the blank page at the top,</p> <p>15 [REDACTED]</p> <p>16 [REDACTED]</p> <p>17 [REDACTED]</p> <p>18 [REDACTED]</p> <p>19 [REDACTED]</p> <p>20 [REDACTED] Do you see that?</p> <p>21 A Yes.</p> <p>22 Q I should say for the record, this</p> <p>23 case is one of the cases that was [REDACTED]</p> <p>24 [REDACTED]</p> <p>25 I'm focused on the next line, where [REDACTED]</p>	<p>239</p> <p>1 documents collected in November of 2010 relating to</p> <p>2 Fairfield?</p> <p>3 A August would have been difficult</p> <p>4 because we learned about that -- I mean, we served</p> <p>5 the summons with notice on August 30th, so it was</p> <p>6 later on. I don't have the exact dates in place.</p> <p>7 Q So beyond collecting those</p> <p>8 physical documents, what additional steps if any did</p> <p>9 BIL take at the bank level to preserve and collect</p> <p>10 documents?</p> <p>11 MR. BUTLER: Can you clarify what topic we</p> <p>12 are under now? I don't think one of the topics was</p> <p>13 all steps taken. I think this witness is aware, so</p> <p>14 I don't really have objection to the question.</p> <p>15 Topic 3 is just about the notice of the holds</p> <p>16 themselves and the contents, which you have.</p> <p>17 MR. FLUGMAN: It's clearly encompassed by</p> <p>18 topic 7 and arguably also at topic 6.</p> <p>19 MR. BUTLER: No, not 7, that has to do</p> <p>20 with the search for documents in response to your</p> <p>21 document request, as I interpret it, specifically</p> <p>22 your May 31, 2022 request, not to events in 2010.</p> <p>23 Anyway, I will let the witness answer the</p> <p>24 question. I am not sure the witness has been</p> <p>25 prepared to talk about everything that was done to</p>
<p>238</p> <p>1 [REDACTED]</p> <p>2 [REDACTED]</p> <p>3 [REDACTED]</p> <p>4 [REDACTED]</p> <p>5 [REDACTED]</p> <p>6 [REDACTED]</p> <p>7 MR. BUTLER: Just objection to form. You</p> <p>8 seem to be asking specifically about U.S. attorney</p> <p>9 advice. I will instruct the witness not to answer.</p> <p>10 We have been directed to produce this notice, but we</p> <p>11 have not waived privilege with respect to anything</p> <p>12 outside of this notice.</p> <p>13 MR. FLUGMAN: Disagree about that. But</p> <p>14 let me ask the question a different way.</p> <p>15 BY MR. FLUGMAN:</p> <p>16 Q What internal measures at the bank</p> <p>17 level did BIL take in November of 2010 in connection</p> <p>18 with the litigation hold notice that was issued?</p> <p>19 A One of the steps was collecting of</p> <p>20 the physical papers, the Fairfield redemptions and</p> <p>21 subscriptions, taking copies of that. There was a</p> <p>22 lot of steps.</p> <p>23 Q Did that -- I thought your</p> <p>24 testimony was that those documents had been</p> <p>25 collected in August of 2010. Were there additional</p>	<p>240</p> <p>1 preserve documents in November of 2010. I think he</p> <p>2 is probably as prepared as anyone to talk about</p> <p>3 that.</p> <p>4 MR. FLUGMAN: For the record, I think</p> <p>5 these questions are absolutely covered by topic 7.</p> <p>6 The collection of e-mails in response to our</p> <p>7 document request is illustrative as including but</p> <p>8 not limited to, and the efforts that the bank took</p> <p>9 in connection with placing its litigation hold and</p> <p>10 implementing it I think is at the very core of the</p> <p>11 deposition today.</p> <p>12 So I am glad that the witness is prepared</p> <p>13 to testify about that. Again, I put the question to</p> <p>14 the witness.</p> <p>15 BY MR. FLUGMAN:</p> <p>16 Q What steps were taken at the bank</p> <p>17 level, beyond the collection of the physical</p> <p>18 documents you mentioned a moment ago, to preserve</p> <p>19 information that is -- was potentially relevant to</p> <p>20 this case?</p> <p>21 A Well, no specific steps were taken</p> <p>22 besides [REDACTED]</p> <p>23 [REDACTED]</p> <p>24 [REDACTED]</p> <p>25 [REDACTED]</p>

December 14, 2022

241

1 [REDACTED]  
2 [REDACTED]  
3 [REDACTED]  
4 [REDACTED]  
5 [REDACTED]  
6 Q Okay. We will look at the actual  
7 litigation hold notice in a moment.  
8 Beyond sending out the litigation hold  
9 notice and the collection of physical documents you  
10 mentioned, did the bank take any other steps at the  
11 bank level in order to preserve potentially relevant  
12 information to this case?  
13 A **To the best of my knowledge, no.**  
14 Q Did the bank -- let me rephrase.  
15 So as I understand your testimony, the  
16 bank did not, for example, institute a preservation  
17 of e-mails at the server level in November of 2010,  
18 is that right?  
19 A **That is correct, yes.**  
20 Q And so that -- sorry.  
21 The e-mail goes on to say [REDACTED]  
22 [REDACTED] do you see that in the middle of that  
23 second paragraph on the page?  
24 A **Yes.**  
25 Q [REDACTED]

242

1 [REDACTED]  
2 [REDACTED]  
3 [REDACTED]  
4 [REDACTED]  
5 A **Yes.**  
6 Q And he goes on saying that  
7 counsel, I believe he is referring to [REDACTED]  
8 [REDACTED]  
9 [REDACTED]  
10 [REDACTED]  
11 [REDACTED]  
12 [REDACTED] Do you see that?  
13 A **Yes, sir.**  
14 Q Is it fair to say that the  
15 litigation hold notice was issued because it was  
16 recommended by U.S. counsel to issue it?  
17 A **That is correct, yes.**  
18 Q Is this the only litigation hold  
19 notice that had -- let me ask it a different way.  
20 Had BIL ever issued a litigation hold  
21 notice like the one attached to this e-mail before  
22 this one?  
23 MR. BUTLER: Object to form. Are you  
24 talking about for this case or for other cases?  
25 MR. FLUGMAN: In any circumstance.

243

1 MR. BUTLER: Then I object as outside the  
2 scope. But you can answer, if you know.  
3 A **To the best of my knowledge, no,**  
4 **but I am not in charge of the litigation department**  
5 **of the bank, so I am not most appropriate person to**  
6 **answer that question.**  
7 **BY MR. FLUGMAN:**  
8 Q You are not aware of any --  
9 A **I am not.**  
10 Q -- such notice having been issued  
11 in a different litigation?  
12 A **Yes.**  
13 Q And the e-mail [REDACTED]  
14 [REDACTED]  
15 [REDACTED]  
16 A **That is correct.**  
17 Q [REDACTED]  
18 [REDACTED]  
19 A **That is my understanding, yes.**  
20 Q It is fair to say that at this  
21 point in time, [REDACTED] when this e-mail  
22 was sent, BIL recognized that it was important to  
23 preserve and collect both electronic and physical  
24 documents, correct?  
25 A **Yes.**

244

1 Q Let's take a look at the actual  
2 litigation hold now.  
3 (Exhibit 19 marked for identification.)  
4 BY MR. FLUGMAN:  
5 Q Sir, the court reporter has handed  
6 you Exhibit 19. Do you recognize this document as  
7 the litigation hold that was appended to  
8 [REDACTED] e-mail we were just looking at?  
9 A **Yes, sir.**  
10 Q The hold appears to be [REDACTED]  
11 [REDACTED] Can you remind me who that  
12 was at the time?  
13 A **His title is mentioned at the**  
14 **bottom of the document, but I can repeat.** [REDACTED]  
15 [REDACTED]  
16 Q [REDACTED]  
17 [REDACTED]  
18 A **Yes. Exactly.**  
19 Q [REDACTED]  
20 [REDACTED]  
21 A **At the time -- he didn't change**  
22 **his position, so at the time he was -- and today**  
23 **still i** [REDACTED]  
24 [REDACTED]  
25 Q The purpose of this litigation

December 14, 2022

245

1 hold -- let me ask it this way.  
2 Do you understand what the purpose of this  
3 litigation hold was?  
4 **A I think so, yes.**  
5 **Q** Can you tell me what your  
6 understanding is, please, sir?  
7 **A My understanding is that this memo**  
8 **has several purposes; first of all, to make certain**  
9 **employees, selected employees aware about important**  
10 **information they should know about. So, the fact**  
11 **that they have received important information, to**  
12 **inform them, first of all, about the Fairfield**  
13 **proceedings.**  
14 **Secondly, also to inform**  
15 **And thirdly, it is mentioned**  
16  
17  
18  
19 **Q** Focusing on the first paragraph of  
20 the litigation hold notice, reading from the second  
21 sentence, it says on the fourth line,  
22 do you see that?  
23 **A Yes, sir.**  
24 **Q**  
25

246

1  
2  
3  
4 do you see that?  
5 **A Yes, sir.**  
6 **Q** It goes on,  
7  
8  
9 id I read that correctly?  
10 **A I think so. It is not my native**  
11 **language.**  
12 **Q** Taking it in pieces,  
13  
14  
15  
16  
17 is that fair?  
18 **MR. BUTLER:** I have a problem with that  
19 one. This document says what it says. We can all  
20 read it. You are asking now about the beliefs of  
21 the bank as it relates to this particular litigation  
22 after it was filed. I am going to instruct the  
23 witness not to answer on that.  
24 I am not going to let you go into -- you  
25 can read what is on the document. But in terms of

247

1 other beliefs or understandings that the bank had  
2 about pending -- this pending lawsuit, that is  
3 clearly work product. Because it's Mr. Dewitte it  
4 is protected by attorney/client privilege. That is  
5 the basis of my instruction.  
6 **BY MR. FLUGMAN:**  
7 **Q** We can move on.  
8  
9  
10 **A Yes.**  
11 **Q** If you look in the next paragraph,  
12 paragraph refers to  
13  
14 you agree?  
15 **A Yes, I agree.**  
16 **Q** It also  
17  
18  
19 do you see that?  
20 **A Yes, sir.**  
21 **Q** So the notice is intended to  
22 you would  
23 agree?  
24 **A I agree.**  
25 **Q** You would also agree, sir, that

248

1 the instruction in this paragraph is  
2  
3  
4 greed?  
5 **A Yes, sir.**  
6 **Q** And then the  
7  
8  
9  
10 would you agree?  
11 **A Yes, sir.**  
12 **Q** So the litigation hold i  
13  
14  
15 is that  
16 correct?  
17 **A Yes.**  
18 **Q** The e-mail -- sorry, the hold  
19 notice goes on  
20  
21  
22  
23 do you see that?  
24 **A Yes, sir.**  
25 **Q** You would agree with me that



December 14, 2022

249  
1 [REDACTED]  
2 [REDACTED]  
3 [REDACTED] right?  
4 **A It is drafted so broadly. Yes.**  
5 **That is the intention, yes.**  
6 Q The final paragraph of the hold  
7 notice states, I am quoting again, [REDACTED]  
8 [REDACTED]  
9 [REDACTED]  
10 [REDACTED]  
11 You see that sentence there?  
12 **A Yes, sir.**  
13 Q Did [REDACTED]  
14 [REDACTED]  
15 [REDACTED]  
16 [REDACTED]  
17 [REDACTED]  
18 **A No, sir.**  
19 Q I'm sorry, did you --  
20 **A I said no, sir.**  
21 Q Thank you.  
22 **A** [REDACTED]  
23 Q [REDACTED]  
24 [REDACTED]  
25 [REDACTED]

250  
1 [REDACTED]  
2 [REDACTED]  
3 **A** [REDACTED]  
4 [REDACTED]  
5 Q Was that part of -- was that the  
6 e-mail -- let me rephrase.  
7 Was that the communications we talked  
8 about a little while ago, the middle of 2022?  
9 **A Yes.**  
10 Q Was that for collection of  
11 documents that are -- were potentially responsive to  
12 the liquidator's document requests?  
13 **A Yes.**  
14 Q Just so I am clear, besides  
15 that [REDACTED]  
16 [REDACTED]  
17 [REDACTED]  
18 [REDACTED]  
19 [REDACTED]  
20 **A No.**  
21 Q [REDACTED]  
22 [REDACTED]  
23 [REDACTED]  
24 [REDACTED]  
25 [REDACTED]

251  
1 MR. BUTLER: I need to hear that question  
2 again, please.  
3 (Court reporter read back.)  
4 MR. BUTLER: You can answer yes or no.  
5 **A No.**  
6 **BY MR. FLUGMAN:**  
7 Q The hold notice at Exhibit 19 does  
8 not [REDACTED] does it?  
9 **A No, I don't think so. I don't**  
10 **think so, no.**  
11 Q The hold notice at Exhibit 19  
12 [REDACTED]  
13 [REDACTED] does it?  
14 **A No.**  
15 Q Did BIL train any of the  
16 recipients of the litigation hold on how to comply?  
17 **A I'm sorry, could you -- BIL**  
18 **train --**  
19 Q Let me ask the question again.  
20 Did anybody at BIL train or assist the BIL employees  
21 who had received this e-mail on how to comply with  
22 [REDACTED] contained in the notice?  
23 **A Well, not specifically each one of**  
24 **them, but several members -- several persons**  
25 **mentioned as had received were member of the private**

252  
1 **executive committee of the bank, either they had**  
2 **senior positions with the bank. So they were given**  
3 **the importance of this topic also in 2000 -- at the**  
4 **time. They were aware about the importance of it.**  
5 **I didn't check the specific points, but**  
6 **each team has its team meetings and each department**  
7 **has department meetings. So, the meta file is being**  
8 **discussed and reported to the management board on a**  
9 **regular basis. Once an important fact occurred,**  
10 **discussed at that level, that information is always**  
11 **downstreamed in the management meetings of the**  
12 **underlying teams.**  
13 **So all team members -- the team members**  
14 **which are included in this e-mail have been informed**  
15 **about the importance of it.**  
16 Q So just to clarify that so I  
17 understand your testimony, are you say saying that  
18 after this litigation hold notice was sent out in  
19 late November of 2010 that all of the recipients of  
20 the notice were instructed as to the importance of  
21 the notice in some meeting or other verbal format?  
22 **A No. What I was trying to say, I**  
23 **apologize if I didn't express myself clearly enough,**  
24 **is that important topics within the bank are being**  
25 **discussed on the level of the management board.**

December 14, 2022

<p style="text-align: right;">253</p> <p>1 Each management board member or executive committee 2 member has its own business line and its own 3 management team; during which the topics of the 4 management board are being discussed. 5 This typically should have been an 6 important topic which should have been downstreamed 7 to the underlying teams. I didn't check to what 8 extent that effectively has been performed. But I 9 don't want to make the impression that this 10 information was just passed along like that without 11 any assistance to the other -- to the addressees. 12 Q Sir, can I ask, sitting here 13 today, do you know that this topic was discussed in 14 any of the management meetings, downstream meetings 15 you just referenced in your answer? 16 A It is information that I didn't 17 check, no. 18 Q So the answer to my question is 19 no, correct? 20 A Correct. 21 Q Let's turn back to the e-mail that 22 attached the litigation hold notice. Before we get 23 to that point, the physical collection of documents 24 that you obtained from Benny Reiter that we talked 25 about earlier today --</p>	<p style="text-align: right;">255</p> <p>1 A We exchanged e-mails with him in 2 relation to the documents, when there would be -- 3 when we would be able to get them to get copies. 4 Q So -- just is so I understand, you 5 think that there are e-mails that you have in your 6 possession -- not in the room, but in your files, of 7 exchanges with Mr. Reiter at the time you were 8 collecting these documents from him, is that 9 correct? 10 A If my memory is correct, yes. 11 MR. FLUGMAN: We'll make a request for 12 production of those documents. 13 MR. BUTLER: Those are documents we 14 produced to you. What difference does it make when 15 they were collected precisely? But you can make the 16 request. 17 MR. FLUGMAN: We can talk about it after 18 the deposition. 19 BY MR. FLUGMAN: 20 Q Just so I understand the timeline 21 again, and I'm sorry if I am asking a question I 22 have asked, between November 25, 2010, when the 23 litigation hold notice went out, and middle of 2022, 24 when you testified that you had helped collect 25 documents related to the liquidator's document</p>
<p style="text-align: right;">254</p> <p>1 A Copies of these. 2 Q Copies, right, of the documents 3 you got from Mr. Reiter, do I understand your 4 testimony correctly that that occurred sometime 5 after August 30th of 2010? 6 A I didn't check the exact date. 7 Q Do you think it was shortly after 8 then? 9 A I didn't check the exact date. 10 Q Do you know whether that 11 information was collected before this litigation 12 hold was sent? 13 A Again, I didn't check the exact 14 date. 15 Q Presumably Mr. Reiter would know 16 that, or could you ask Mr. Reiter that information? 17 A Well, to be transparent, he is 18 retired for several years. So I talked to him about 19 the Madoff file and the Fairfield case in 20 particular, and he didn't have any memory at all 21 about what happened. This happened a long time ago. 22 Mr. Reiter retired also a long time ago. I have the 23 e-mail exchanges in my archives. 24 Q Sorry. Which e-mail exchanges are 25 you referring to?</p>	<p style="text-align: right;">256</p> <p>1 requests, did BIL collect any documents relating to 2 the Fairfield funds from the recipients of the 3 litigation hold notice? 4 A Some BIL employees replied to this 5 request. 6 Q Did they reply by sending e-mails? 7 A Yes, to this [REDACTED] 8 Q Sorry. Were those e-mails -- were 9 they sending underlying e-mails relating to the 10 topic of the litigation hold notice, or were they 11 just communicating with the legal department by 12 e-mail about the litigation hold notice? 13 A No. It was following up on this 14 document retention notice. 15 Q Asking questions about the notice 16 or -- 17 A No. There was one employee, she 18 provided general information letter issued by the 19 Fairfield liquidator which was in her possession. 20 She told us, this might be of interest to you. 21 Q And where is that letter stored 22 now? 23 A It is stored in our -- well, 24 archiving server of our team. 25 Q Do you remember which person that</p>

December 14, 2022

257

1 was that sent that e-mail?  
2 **A Yes, it was -- it was Sandy**  
3 **Goergen, on the same date of the -- that memo was**  
4 **sent out.**  
5 **Q** [REDACTED]  
6 [REDACTED] Is it fair to say that  
7 in November of 2010 when she sent that e-mail [REDACTED]  
8 [REDACTED] that  
9 Ms. Goergen had electronically stored information  
10 relating to the Fairfield funds?  
11 **A Yes.**  
12 **Q** Let's go back to the e-mail  
13 itself. I am focused now on the first couple pages  
14 of the e-mail. [REDACTED]  
15 [REDACTED]  
16 [REDACTED]  
17 **A Yes.**  
18 **Q** I haven't counted myself and I  
19 won't ask you to do that, but the list of names [REDACTED]  
20 [REDACTED] Is that an  
21 accurate representation?  
22 **A It depends on the type, the size**  
23 **of the letters you use.**  
24 **Q** In the version -- the printed  
25 version in front of you, [REDACTED]

258

1 [REDACTED] am I  
2 correct?  
3 **A Yes.**  
4 **Q** [REDACTED]  
5 [REDACTED]  
6 **A Yes.**  
7 **Q** Who was responsible within BIL for  
8 selecting the individuals who received the  
9 litigation hold notice in November of 2010?  
10 **A That was done together between**  
11 **certain people of the task force, the Madoff task**  
12 **force, that certain persons, BIL employees have been**  
13 **selected because either they had -- they were part**  
14 **of the front office, direct contact with the**  
15 **clients, either working in the back offices or**  
16 **middle offices in the back.**  
17 **Q** And my next question may be  
18 answered in whole or in part by the answer you just  
19 gave, but can you describe the criteria that the  
20 person or persons responsible for selecting the  
21 recipients used when determining who in the bank  
22 should get the notice and who should not?  
23 **A The criteria?**  
24 **MR. BUTLER:** Hold on a second. The  
25 witness went into that area, but it was not

259

1 responsive to your question. So I didn't get a  
2 chance to object.  
3 I don't think I am going to allow the  
4 witness to testify about -- apart from the content  
5 of who was sent, the thinking and the strategy that  
6 went behind that. As it relates to this particular  
7 litigation, I think it is work product and off  
8 limits.  
9 Very generally I am happy to have the  
10 witness talk about who is included in this list, if  
11 you want to ask the question that way, I think that  
12 would be more appropriate. But if you are asking  
13 about the mental impressions of the lawyer who  
14 helped come up with this list, that is off limits.  
15 So as phrased I will instruct the witness  
16 not to answer.  
17 **BY MR. FLUGMAN:**  
18 **Q** Let's try and separate that out,  
19 then. What types of people within BIL were selected  
20 to receive the litigation hold notice that was  
21 attached to this e-mail in 2010?  
22 **A Okay. Front office, middle office**  
23 **and back office people.**  
24 **Q** And as that relates to all of the  
25 investments in the Fairfield funds that BIL handled?

260

1 **A What do you mean by all of the**  
2 **investments made by -- could you please clarify your**  
3 **question, please?**  
4 **Q** There are lots of front office,  
5 middle office and back office, I presume, at BIL.  
6 What I am just trying to understand is all of the  
7 people who received this litigation hold notice  
8 received it because they potentially had information  
9 relevant to the Fairfield funds, correct?  
10 **A Correct. Makes sense.**  
11 **Q** Did the task force or whomever was  
12 responsible for selecting this group of people to  
13 receive the litigation hold notice interview anyone  
14 at BIL as part of their process of selecting these  
15 individuals?  
16 **A I don't recall an interview at**  
17 **that time with the employees in relation to this**  
18 **selection process took place. However, at the time**  
19 **what occurred was the identification of the clients**  
20 **being invested in Fairfield.**  
21 **Q** And by that you mean which  
22 customers of the bank had investments in Fairfield  
23 through BIL?  
24 **A Exactly. So when you see into**  
25 **which basic contract the client was invested, you**

December 14, 2022

<p>261</p> <p>1 can see who is the client advisor responsible for 2 that client. 3 So by means of that reasoning, you can 4 select the front office. For instance, you will see 5 that Gianni Baldinucci is mentioned in the scope of 6 these e-mails. On the other hand, the middle office 7 and the back office, it is much broader because you 8 cannot select a particular person that has been 9 involved yes or no. 10 This is the reason why I didn't go through 11 details with you with all these names, but you will 12 only find, to the best of my understanding, limited 13 number of names of front office people and a much 14 larger number of names of back office related 15 people. 16 Q So, you mentioned Mr. Baldinucci, 17 whom we talked about earlier. Mr. Baldinucci did 18 receive the litigation hold in November of 2010, 19 correct? 20 A [REDACTED] 21 [REDACTED] 22 [REDACTED] 23 Q Do you have any reason to doubt 24 that Mr. Baldinucci received the litigation hold 25 notice?</p>	<p>263</p> <p>1 received the litigation hold? 2 A I didn't go through all the names, 3 to be honest. I just -- 4 Q I think you will see, if you look 5 at the names on the litigation hold, and I'm happy 6 to provide you the opportunity to do so if you like, 7 that her name does not appear in this list. I think 8 you testified earlier that this was the only -- 9 everyone who received the litigation hold in 10 November of 2010 would be listed on this list of 11 recipients, correct? 12 A Correct, yes. 13 Q And there was no subsequent e-mail 14 to additional people attaching the litigation hold? 15 A No. 16 Q Do you have an understanding as to 17 why Ms. Reyter did not receive the litigation hold? 18 A Well, the selection process -- I 19 was not personally involved in that. I only 20 reviewed some e-mails in relation to that selection 21 process. 22 Q So again my question, do you have 23 an understanding sitting here today as to why 24 Ms. May Reyter did not receive the litigation hold? 25 A No.</p>
<p>262</p> <p>1 A I'm sorry? 2 Q I said do you have any reason to 3 doubt that Mr. Baldinucci received the notice? 4 A No. [REDACTED] 5 Q Do you know whether Mr. Baldinucci 6 complied with the notice by identifying and setting 7 aside any files he had relating to the funds? 8 A Well, one of the -- in relation to 9 point 7 of the list of topics of the examination, 10 one of the topics covered was that I asked existing 11 colleagues within that team to what extent any 12 information in relation to this particular client or 13 Fairfield in general was available, still available 14 within that team, either in physical form or 15 electronical form. 16 Q I understand that, sir. My 17 question is just a little different. What I am 18 asking for is, do you know whether at the time 19 Mr. Baldinucci received the litigation hold notice 20 in November of 2010, whether he did in fact identify 21 and set aside hard copy and electronic documents 22 that he had relating to investments in the Fairfield 23 funds? 24 A I don't know. 25 Q Do you know whether Ms. Reyter</p>	<p>264</p> <p>1 Q You will agree with me that 2 earlier today we saw several e-mails [REDACTED] 3 [REDACTED] 4 [REDACTED] 5 [REDACTED] correct? 6 A [REDACTED] 7 [REDACTED] 8 yes. 9 Q [REDACTED] 10 [REDACTED] 11 A Correct. Yes. 12 Q With respect to Mr. Reiter, he did 13 receive the litigation hold, is that right? 14 A I didn't check that. I think so, 15 because his name was mentioned as Jeannot. 16 MR. FLUGMAN: Let's take a quick break now 17 and we will come back and wrap up. 18 MR. BUTLER: Okay. With that stipulation, 19 I agree. 20 THE VIDEOGRAPHER: We are going off the 21 record. Time is 5:57 p.m. 22 (Off the record.) 23 THE VIDEOGRAPHER: We are back on the 24 record. The time is 6:11 p.m. 25 BY MR. FLUGMAN:</p>

December 14, 2022

<p>265</p> <p>1 Q During the break, Mr. Dewitte, we</p> <p>2 took a look at the list of recipients on the last</p> <p>3 exhibit that we were referring to, the e-mail from</p> <p>4 Mr. Mommens. I thought just to be clear about the</p> <p>5 people included in BIL's disclosures about which</p> <p>6 custodians had relevant information, if I can</p> <p>7 address your attention to -- on the first page, the</p> <p>8 second line from the bottom on the left, [REDACTED]</p> <p>9 [REDACTED]</p> <p>10 A Yes.</p> <p>11 Q Flipping the page, [REDACTED]</p> <p>12 [REDACTED]</p> <p>13 A Yes, sir.</p> <p>14 Q [REDACTED]</p> <p>15 [REDACTED]</p> <p>16 [REDACTED]</p> <p>17 [REDACTED]</p> <p>18 A Yes, sir.</p> <p>19 Q Finally, on the third page of the</p> <p>20 document, about halfway down that list of names,</p> <p>21 [REDACTED]</p> <p>22 A Yes, sir.</p> <p>23 Q So you will agree with me that</p> <p>24 each of Mr. Reiter, Ms. Totaro, Ms. Meyers and</p> <p>25 Mr. Balducci received a copy of the litigation</p>	<p>267</p> <p>1 correct?</p> <p>2 A Yes.</p> <p>3 Q And to be clear, sitting here</p> <p>4 today, BIL does not have any ESI including e-mails</p> <p>5 from Ms. Salentiny or Ms. Reyter, correct?</p> <p>6 A Does not have any e-mails from --</p> <p>7 Q From Ms. Salentiny or Ms. Reyter's</p> <p>8 e-mail accounts from the --</p> <p>9 A Pre- --</p> <p>10 Q For the pre-2009 period?</p> <p>11 A Exactly, yes.</p> <p>12 Q And the same is true for</p> <p>13 Mr. Balducci, Ms. Totaro, Mr. Reiter an</p> <p>14 Ms. Meyers?</p> <p>15 A At relevant time period, yes.</p> <p>16 MR. FLUGMAN: That is all we have.</p> <p>17 MR. BUTLER: I have no questions myself.</p> <p>18 We are finished.</p> <p>19 MR. FLUGMAN: Thank you very much for your</p> <p>20 time.</p> <p>21 THE VIDEOGRAPHER: This concludes the</p> <p>22 deposition. We are going off the record. The time</p> <p>23 is 6:15 p.m.</p> <p>24 (Exhibit 20 marked for identification.)</p> <p>25 (Off the record.)</p>
<p>266</p> <p>1 hold notice that was attached to Mr. Mommens'</p> <p>2 November 25, 2010 e-mail, correct?</p> <p>3 A I confirm.</p> <p>4 Q I think we already spoke about</p> <p>5 Ms. Reyter not being on this list, and again, you</p> <p>6 can take as much time as you like to look at it.</p> <p>7 A Ms. --</p> <p>8 Q Ms. Chantal Reyter. The other</p> <p>9 name that was disclosed to us as having relevant</p> <p>10 information is Ms. Salentiny, and she does not</p> <p>11 appear in this list of names in this exhibit,</p> <p>12 meaning that she did not receive the litigation</p> <p>13 hold, would you agree?</p> <p>14 A If she was not on the list, she</p> <p>15 did not receive, correct.</p> <p>16 Q You will agree with me that like</p> <p>17 Ms. Reyter, earlier in the deposition today we</p> <p>18 reviewed e-mails [REDACTED]</p> <p>19 [REDACTED]</p> <p>20 [REDACTED] you will</p> <p>21 agree?</p> <p>22 A That is correct.</p> <p>23 Q And so you will agree with me that</p> <p>24 Ms. Salentiny, like Ms. Reyter, did at one point</p> <p>25 have [REDACTED] e-mails [REDACTED]</p>	<p>268</p> <p>1 ACKNOWLEDGMENT OF DEPONENT</p> <p>2</p> <p>3</p> <p>4 I, Herman Dewitte, do hereby</p> <p>5 acknowledge that I have read and examined the</p> <p>6 foregoing testimony, and the same is a true, correct</p> <p>7 and complete transcription of the testimony given by</p> <p>8 me and any corrections appear on the attached Errata</p> <p>9 sheet signed by me.</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15 (DATE) (SIGNATURE)</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

December 14, 2022

269

CERTIFICATE OF COURT REPORTER

I, Christine Myerly, do hereby certify that  
I took the stenotype notes of the foregoing  
deposition and that the transcript thereof is a true  
and accurate record transcribed to the best of my  
skill and ability.

I further certify that I am neither  
counsel for, related to, nor employed by any of  
the parties to the action in which this deposition  
was taken, and that I am not a relative or  
employee of any attorney or counsel employed by  
the parties hereto, nor financially or otherwise  
interested in the outcome of the action.

Dated this 22nd day of December, 2022.



Christine Myerly

Transcript of Herman Dewitte

December 14, 2022

69

[REDACTED]

Transcript of Herman Dewitte

December 14, 2022

70

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]



Transcript of Herman Dewitte

December 14, 2022

71

<p>[REDACTED]</p>	<p>[REDACTED]</p>	<p>[REDACTED]</p>	<p>[REDACTED]</p>
-------------------	-------------------	-------------------	-------------------

Transcript of Herman Dewitte

December 14, 2022

72

[REDACTED]

Transcript of Herman Dewitte

December 14, 2022

73

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Transcript of Herman Dewitte

December 14, 2022

74

<p>[REDACTED]</p>	<p>[REDACTED]</p>	<p>[REDACTED]</p>	<p>[REDACTED]</p>
-------------------	-------------------	-------------------	-------------------

PLANET DEPOS

888.433.3767 | WWW.PLANETDEPOS.COM

Transcript of Herman Dewitte

December 14, 2022

75

<p>[REDACTED]</p>	<p>[REDACTED]</p>	<p>[REDACTED]</p>	<p>[REDACTED]</p>
-------------------	-------------------	-------------------	-------------------

Transcript of Herman Dewitte

December 14, 2022

76

[REDACTED]

Transcript of Herman Dewitte

December 14, 2022

77

[REDACTED]

Transcript of Herman Dewitte

December 14, 2022

78

<div data-bbox="164 203 420 1770"></div>	<div data-bbox="493 203 789 1791"></div>	<div data-bbox="823 203 1086 1812"></div>	<div data-bbox="1153 203 1455 1787"></div>
--	--	---	--



Transcript of Herman Dewitte

December 14, 2022

79

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Transcript of Herman Dewitte

December 14, 2022

80

<div>[REDACTED]</div>	<div>[REDACTED]</div>	<div>[REDACTED]</div>	<div>[REDACTED]</div>
-----------------------	-----------------------	-----------------------	-----------------------

Transcript of Herman Dewitte

December 14, 2022

81

[REDACTED]

Transcript of Herman Dewitte

December 14, 2022

82

<p>[REDACTED]</p>	<p>[REDACTED]</p>	<p>[REDACTED]</p>	<p>[REDACTED]</p>
-------------------	-------------------	-------------------	-------------------

Transcript of Herman Dewitte

December 14, 2022

83

[REDACTED]

Transcript of Herman Dewitte

December 14, 2022

84

[REDACTED]

Transcript of Herman Dewitte

December 14, 2022

85

[REDACTED]

Transcript of Herman Dewitte

December 14, 2022

86

<p>[REDACTED]</p>	<p>[REDACTED]</p>	<p>[REDACTED]</p>	<p>[REDACTED]</p>
-------------------	-------------------	-------------------	-------------------



Transcript of Herman Dewitte

December 14, 2022

87

[REDACTED]

Transcript of Herman Dewitte

December 14, 2022

88

[REDACTED]

Transcript of Herman Dewitte

December 14, 2022

89

<p>[REDACTED]</p>	<p>[REDACTED]</p>	<p>[REDACTED]</p>	<p>[REDACTED]</p>
-------------------	-------------------	-------------------	-------------------

Transcript of Herman Dewitte

December 14, 2022

90

[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
------------	------------	------------	------------

Transcript of Herman Dewitte

December 14, 2022

91

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Transcript of Herman Dewitte

December 14, 2022

92

<p>[REDACTED]</p>	<p>[REDACTED]</p>	<p>[REDACTED]</p>	<p>[REDACTED]</p>
-------------------	-------------------	-------------------	-------------------

Transcript of Herman Dewitte

December 14, 2022

93

[REDACTED]

Transcript of Herman Dewitte

December 14, 2022

94

<div data-bbox="164 203 406 1778" data-label="Text"><p>[REDACTED]</p></div>	<div data-bbox="493 203 755 1778" data-label="Text"><p>[REDACTED]</p></div>	<div data-bbox="823 203 1084 1778" data-label="Text"><p>[REDACTED]</p></div>	<div data-bbox="1153 203 1453 1778" data-label="Text"><p>[REDACTED]</p></div>
---	---	--	---



Transcript of Herman Dewitte

December 14, 2022

95

<div>[REDACTED]</div>	<div>[REDACTED]</div>	<div>[REDACTED]</div>	<div>[REDACTED]</div>
<div>[REDACTED]</div>	<div>[REDACTED]</div>	<div>[REDACTED]</div>	

Transcript of Herman Dewitte

December 14, 2022

96

<p>[REDACTED]</p>	<p>[REDACTED]</p>	<p>[REDACTED]</p>	<p>[REDACTED]</p>
-------------------	-------------------	-------------------	-------------------

Transcript of Herman Dewitte

December 14, 2022

97

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Transcript of Herman Dewitte

December 14, 2022

98

<p>[REDACTED]</p>	<p>[REDACTED]</p>	<p>[REDACTED]</p>	<p>[REDACTED]</p>
-------------------	-------------------	-------------------	-------------------

Transcript of Herman Dewitte

December 14, 2022

99

[REDACTED]

Transcript of Herman Dewitte

December 14, 2022

100

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Transcript of Herman Dewitte

December 14, 2022

101

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Transcript of Herman Dewitte

December 14, 2022

102

[REDACTED]



Transcript of Herman Dewitte

December 14, 2022

103

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Transcript of Herman Dewitte

December 14, 2022

104

[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
------------	------------	------------	------------

Transcript of Herman Dewitte

December 14, 2022

105

<p>[REDACTED]</p>	<p>[REDACTED]</p>	<p>[REDACTED]</p>	<p>[REDACTED]</p>
-------------------	-------------------	-------------------	-------------------

Transcript of Herman Dewitte

December 14, 2022

106

[REDACTED]

Transcript of Herman Dewitte

December 14, 2022

107

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Transcript of Herman Dewitte

December 14, 2022

108

[REDACTED]

Transcript of Herman Dewitte

December 14, 2022

109

[REDACTED]

Transcript of Herman Dewitte

December 14, 2022

110

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]



Transcript of Herman Dewitte

December 14, 2022

111

[REDACTED]

Transcript of Herman Dewitte

December 14, 2022

112

[REDACTED]

Transcript of Herman Dewitte

December 14, 2022

113

[REDACTED]

Transcript of Herman Dewitte

December 14, 2022

114

<p>[REDACTED]</p>	<p>[REDACTED]</p>	<p>[REDACTED]</p>	<p>[REDACTED]</p>
-------------------	-------------------	-------------------	-------------------

Transcript of Herman Dewitte

December 14, 2022

115

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Transcript of Herman Dewitte

December 14, 2022

116

[REDACTED]

Transcript of Herman Dewitte

December 14, 2022

117

[REDACTED]

Transcript of Herman Dewitte

December 14, 2022

118

[REDACTED]



Transcript of Herman Dewitte

December 14, 2022

119

[REDACTED]

Transcript of Herman Dewitte

December 14, 2022

120

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Transcript of Herman Dewitte

December 14, 2022

121

[REDACTED]

Transcript of Herman Dewitte

December 14, 2022

122

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Transcript of Herman Dewitte

December 14, 2022

123

[REDACTED]

Transcript of Herman Dewitte

December 14, 2022

124

<p>[REDACTED]</p>	<p>[REDACTED]</p>	<p>[REDACTED]</p>	<p>[REDACTED]</p>
-------------------	-------------------	-------------------	-------------------

Transcript of Herman Dewitte

December 14, 2022

125

[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
------------	------------	------------	------------

Transcript of Herman Dewitte

December 14, 2022

126

[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
------------	------------	------------	------------



Transcript of Herman Dewitte

December 14, 2022

127

[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
------------	------------	------------	------------

Transcript of Herman Dewitte

December 14, 2022

128

[REDACTED]